

## CHAPTER V. BUSINESS LICENSES AND REGULATIONS

### ARTICLE 5. MASSAGE

#### SECTIONS

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#### 5-501. DEFINITIONS.

- (a) **“Applicant.”** A person who has applied to the City for a Massage Establishment License or a Massage Therapy License or Permit as authorized by this ordinance.
- (b) **“License.”** An authorization as provided for in this ordinance for a person to:
  - (1) Operate and conduct a Massage Establishment; or
  - (2) Perform and provide Massage Therapy
- (c) **“Licensee.”** A person who has been granted a License as provided for by this ordinance.

- (d) **"Massage."** 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 the human genitalia.
- (e) **"Massage Establishment."** A fixed place of business within the City where Massage Therapy is administered for compensation, including, massage salons, sauna baths, steam baths, and health clubs. Such place of business shall be only upon authorized commercial premises as specifically provided for hereafter. For the provisions and requirements of this ordinance, this definition shall not be construed to include hospitals, nursing homes, medical clinics or the commercial offices of: (1) a licensed physician, surgeon, chiropractor, osteopath or physical therapist when such duly licensed person is directly supervising or administering Massage to his or her patient; (2) a licensed operator of electrolysis equipment (only with regards to the provision of electrolysis treatment); or (3) barbershops or beauty salon which perform Massage only to the scalp, the face, the neck or shoulders.
- (f) **"Massage Therapy."** The application of Massage for consideration of any kind, including discounts and other goodwill offers. For the provisions and requirements of this ordinance, this definition shall not be construed to include: (1) any continuing instruction in martial arts, performing arts or organized athletic activities; (2) any Massage directly supervised or administered by a licensed physician, surgeon, chiropractor, osteopath or physical therapist in his or her commercial offices; (3) any provision of electrolysis by a licensed operator of electrolysis equipment; or (4) any Massage to the scalp, face, neck or shoulders by a licensed barber or beautician.
- (g) **"Massage Therapist."** A person licensed in accordance with this ordinance who engages in the practice of Massage and performs and provides Massage Therapy.
- (h) **"Out Call."** Massage Therapy that is conducted upon the commercial or residential premises of a Patron as specifically provided for hereafter.
- (i) **"Patron."** A person who utilizes or receives the services of Massage Therapy. Such person shall be over 18 years of age; 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 has authorized such therapy in writing.
- (j) **"Permit."** An authorization for a student to perform Massage Therapy only as specifically provided for hereafter.
- (k) **"Person."** Any natural or corporate person, business association or business entity including, but not limited to, a firm, a partnership, an association, a sole proprietorship a successor or assign of any of the foregoing, or any other legal entity.

- (l) ***“Specified Anatomical Areas.”*** The human genitals, pubic region, buttocks, or female breast below a point immediately above the top of the areola.  
(Ord. 1867C; 06-19-00)

**5-502      Massage Licenses in General: License Required.** No person shall perform and provide Massage Therapy within the City or operate and conduct a Massage Establishment within the City without a valid and separate License. Such Licenses shall be issued by the City pursuant to the provisions of this ordinance, and must be current, unrevoked and not suspended. Licenses granted pursuant to this ordinance shall be valid for a period of twelve months from the date of issuance.  
(Ord. 1867C; 06-19-00)

**5-503      Massage Licenses in General: Multiple Licenses.**  
(a) Applicants seeking to operate and conduct a Massage Establishment and to perform and provide Massage Therapy must obtain both a Massage Establishment License and a Massage Therapist License.  
(b) Applicants seeking to operate and conduct multiple Massage Establishments must obtain a separate Massage Establishment License for each location.  
(Ord. 1867C; 06-19-00)

**5-504      Massage Licenses in General: License and Permit Fees.**  
(a) The annual filing fee for a Massage Establishment License, a Massage Therapy License and a Massage Therapy Student Permit shall set by the City’s annual fee schedule, and shall be nonrefundable and nontransferable.  
(b) An individual applicant concurrently applying for both a Massage Establishment License and a Massage Therapy License shall only be charged the fee for a Massage Establishment License.  
(c) Any applications made, fees paid, and Licenses or Permits obtained under the provisions of this ordinance shall be in addition to, and not in lieu of any other fees, taxes, permits, or licenses required to be paid or obtained under any other ordinances of this City.  
(Ord. 1867C; 06-19-00)

**5-505      Massage Licenses in General: Transfer of Licenses and Permits.** No Massage Establishment License, Massage Therapy License or Massage Therapy Student Permit may be transferred to a person other than the Licensee or Permittee named therein.  
(Ord. 1867C; 06-19-00)

**5-506      Massage Licenses in General: Advertising.** No Licensee 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 provided for by this ordinance, or that employees or Massage Therapists are dressed in any manner other than provided for herein, nor shall any text of such advertising indicate that any service is available other than those services authorized by this ordinance.  
(Ord. 1867C; 06-19-00)

**5-507      Massage Licenses in General: Other Provisions.**

- (a) **Applicability to Existing Businesses.** The operators of any existing massage therapy establishment and any providers or performers of Massage Therapy within the City are required to comply with all provisions of this ordinance within ninety (90) days from the enactment of this ordinance.
- (b) **Exceptions.** The provisions of this ordinance shall not apply to a physician, surgeon, chiropractor, osteopath, physical therapist, registered professional nurse, operator of electrolysis equipment, barber or cosmetologist who is lawfully carrying out his or her particular profession or business and holding a valid, unrevoked license or certificate of registration issued by this state.
- (c) **Further Regulations.** The License Clerk, the Chief of Police or the City Administrator may, after a public hearing, make and enforce reasonable rules and regulations not in conflict with, but to carry out the intent of this ordinance.
- (d) **Penalty.** Any person convicted of violating any of the provisions of this ordinance shall be deemed guilty of a public offense and subject to the general penalty provisions of the Leawood City Code.
- (e) **Severability.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof.

(Ord. 1867C; 06-19-00)

**5-508-509      Reserved.**

(Ord. 1867C; 06-19-00)

**5-510      Massage Therapy: License.**

- (a) **Generally.** No person shall perform and provide Massage Therapy within the City without first obtaining a valid Massage Therapist License issued by the City pursuant to the provisions of this ordinance. To receive a License and to perform and provide Massage Therapy, the applicant must operate or be currently employed by a licensed Massage Establishment, and meet the requirements of a Massage Therapist as provided for hereafter. Persons qualified as a Massage Therapist may receive a Massage Therapy License to perform and provide Massage Therapy within the City subject to the eligibility requirements cited hereafter.
- (b) **Application.** Applicants for a License to perform and provide Massage Therapy within the City shall file a written application with the License Clerk and pay a nonrefundable annual filing fee. This fee shall cover the cost of processing the application, not including the current FBI and KBI fingerprint fees. The application for a Massage Therapist License shall contain the following:
  - (1) The name, address and telephone number of the applicant;
  - (2) Written evidence that the applicant is at least 18 years old;
  - (3) The applicant's weight, height, color of hair and eyes, and fingerprints (applicant will not be required to resubmit fingerprints on subsequent renewal applications);
  - (4) Two portrait photographs of the applicant (at least two inches by two inches);

- (5) The position or function the applicant is being hired to perform within such establishment, and the exact nature of the services to be provided under the requested License;
- (6) The business, occupation, or employment of the applicant for the three years immediately preceding the date of application;
- (7) Whether the applicant has ever been convicted of any crime (except minor traffic violations). If so, a statement must be made giving the place and court in which convicted, the offense, and the sentence imposed as a result of such conviction;
- (8) The Massage Therapy and Massage Establishment License history of the applicant, and whether the applicant has in this or any other city or state previously had such license or similar authorization revoked or suspended. In such event, the applicant will provide the reason therefor, and the business activity or occupation subsequent to such action of suspension or revocation;
- (9) The proposed place of business and facilities therefor, including proof that such place of business currently holds a proper Massage Establishment License;
- (10) Proof of the education and experience requirements as provided by this ordinance;
- (11) 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; and
- (12) Any other information deemed necessary by the City to review and process the application.

An applicant seeking the renewal of an existing License only needs to provide the City with that information or documentation necessary to update the applicants' former application.

- (c) **Renewals.** An applicant seeking the renewal of an existing License only needs to provide the City with that information or documentation necessary to update the applicants' former application.
- (d) **Process of Application.** Applications for a Massage Therapy License shall be submitted to the License Clerk, who shall transmit copies of completed applications to the Chief of Police. With the aid and input of the Chief of Police, the License Clerk shall determine whether the information contained in the application is accurate and whether the applicant is qualified to be issued (or reissued) the requested License. Such determination shall be made within fifteen (15) working days from the date the completed application is submitted.

- (e) **Issuance of License.** The License Clerk shall approve the issuance of a Massage Therapist License, unless it is found that:
- (1) The applicant has been convicted of, or diverted on, (i) a felony; (ii) an offense involving sexual misconduct with children; (iii) obscenity; (iv) promoting prostitution as defined by Kansas statute; (v) solicitation of a lewd or unlawful act; (vi) prostitution; (vii) pandering or other sexually related offense; or
  - (2) The applicant has knowingly made any false, misleading, or fraudulent statement of fact in the application or in any document required by the city in conjunction therewith; or
  - (3) The applicant has had a Massage Establishment License, a Massage Therapy License or any other similar license, permit or other authorization denied, revoked, or suspended by the City or any other state, city or local agency within five years prior to the date of the application; or
  - (4) The applicant has previously been issued a license, permit or other authorization for an adult entertainment business (as defined by the Leawood Development Ordinance) or escort service, or has been employed by any such establishment; or
  - (5) 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; or
  - (6) That the applicant has not successfully completed the education standards required under the provisions of this ordinance; or
  - (7) The application is for work to be performed at a Massage Establishment that is unlicensed, or whose License has been suspended or revoked; or
  - (8) Any other application requirement has not been met.
- (f) Upon approval of the application, the License Clerk shall issue the Massage Therapy License that shall be nontransferable and nonrefundable. If the application is disapproved, the applicant shall be immediately notified by certified mail, return receipt requested, mailed to the last known mailing address of the applicant. The notice shall state the basis for the disapproval. Any applicant aggrieved by the disapproval may appeal to the Governing Body within ten (10) days after notice of the disapproval, provided that such appeal shall be reviewed by the Governing Body within thirty (30) days from the date the appeal is submitted. Any applicant still aggrieved after review by the Governing Body may seek judicial review from the Johnson County District Court as provided by law within thirty (30) days after the review by the Governing Body.
- (Ord. 1867C; 06-19-00)  
(Ord. 2758C; 11-02-15)

**5-511**

**Massage Therapy: Out Calls..** Outcalls on residential premises of a Patron within the City are prohibited, unless prescribed by a licensed healing arts practitioner.

- (a) **Residential Premises.** Out Calls may only be conducted at a private residence at the direction of a licensed healing arts practitioner. In such event, the Massage Therapist shall provide to the License Clerk the name and address of the Patron, a copy of the licensed healing arts practitioner's authorization, the date and time of the service, a description of the service, and the fees charged. Prior to any service being done at a private residence, the Massage Therapist must clearly state that he or she is a Licensed Massage Therapist, and the Patron must sign a form requesting the service. All such written requests shall be kept by the Massage Therapist for a period of one year, and shall be produced for inspection when requested by any city officer.
- (b) **Commercial Premises.** Out calls may only be conducted at a commercial business when the following criteria are met.
1. The business hosting the Massage Therapist is currently licensed in the City of Leawood.
  2. The massage is conducted by a Therapist currently licensed by the City of Leawood.
  3. A minimum of two (2) Licensed Massage Therapists are present at the event.
  4. The massage is performed in a public setting (not in an office with a door capable of being locked), and the patron is fully clothed.
  5. A sign-in log or register must be kept by the Licensed Massage Therapist and Massage Establishment for a period of three (3) years.

(Ord. 2561C; 08-06-12)

(Ord. 1867C; 06-19-00)

**5-512** **Massage Therapy: Classification.** The following categories and educational requirements shall be applicable to all Massage Therapists as specifically provided hereafter. Proof of completion of education and training requirements required by this ordinance must be by certified transcripts. The educational and training may be received from more than one school.

- (a) **Education.**

**Massage Therapist**

- (1) To be eligible for a Massage Therapist License, the applicant must provide proof of the following:
- (i) That the applicant has successfully completed a course of instruction, consisting of not less than five hundred (500) hours, in the theory, method or practice of Massage (An hour of instruction is defined as fifty minutes of actual instructional time). The curriculum shall include at a minimum:
    - (a) Two hundred and fifty (250) hours of theory and practice of Massage Therapy technique, to include deep tissue techniques, remedial gymnastics, body mechanics of the practitioner, and medical treatment. A maximum of fifty (50) of these hours may include time spent in a student clinic.

- (b) One hundred thirty (130) hours of anatomy, physiology and kinesiology, including palpation, range of motion, and physics of joint function. There must be a minimum of forty (40) hours of kinesiology.
    - (c) Fifty-five (55) hours of clinical/business practices, to include hygiene, record keeping, medical terminology, professional ethics, business management, human behavior, Patron interaction, state and local laws and three hours of communicable diseases.
    - (d) Fifty (50) hours of pathology including indications and contraindications to Massage Therapy and palpation.
    - (e) Fifteen (15) hours of hydrotherapy.
  - (ii) As an alternative to the above educational requirements, the applicant may provide proof that:
    - a. The applicant is currently licensed or has been licensed within six months of the date of application for a minimum of one year with a (U.S.) state's licensing authority that requires a course of instruction, consisting of not less than five hundred (500) hours, in the theory, method or practice of Massage. The required curriculum must include anatomy, physiology, kinesiology, pathology, first aid and hygiene and practical instruction in Massage technique; or
    - b. The applicant has successfully passed the 1992 or later, National Certification Examination for Therapeutic Massage and Bodywork and has successfully completed a course of instruction, consisting of not less than three hundred (500) hours, in the theory, method or practice of Massage. The required curriculum must include the subjects of anatomy, physiology, kinesiology, pathology, first aid and hygiene and practical instruction in Massage technique.
  - (iii) In addition to meeting the requirements of either subsection (i) or subsection (ii), 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.
- (2) Eligibility. A Licensed Massage Therapist may perform and provide Massage Therapy at a Massaged Establishment. A Licensed Massage Therapist may also perform and provide Out Calls only when prescribed by a licensed healing arts practitioner.
- (3) Student Massage Therapy. Student Massage Therapy is prohibited within the City unless an individual meets the qualifications of provision 5-615 of this ordinance.

(Ord. 1867C; 06-19-00)



**5-513      Massage Therapy: Identification Cards.** All Massage Therapists issued a License or Permit pursuant to the provisions of this ordinance shall at all time have in their possession a valid Identification Card when working in a Massage Establishment or performing and providing Out Calls. Such Identification Card shall be conspicuously worn on the Massage Therapist's clothing, or be posted on the wall of the massage room in a conspicuous location. Such Identification Card shall bear the Massage Therapist's name, license number, classification, physical description, and a photograph, and shall be laminated to prevent alteration. Additionally, all Massage Therapists shall keep their Licenses and Permits available for inspection at all times upon request of any person who by law may inspect the same.

(Ord. 1867C; 06-19-00)

**5-514      Massage Therapy: Patron Registers.** All Massage Therapists issued a License or Permit pursuant to the provisions of this ordinance shall keep a daily register of all Patrons in a form approved by the License Clerk. Such register shall list the Patrons' names, addresses, hours of arrival, and, if applicable, the rooms or cubicles assigned. Said register shall at all times during business hours be subject to inspection by City inspectors and police officers, and shall be kept on file for one year. Such register may be kept and supervised by the Massage Establishment as provided for hereafter.

(Ord. 1867C; 06-19-00)

**5-515      Massage Therapy: Applicability to Existing Massage Providers.** An individual providing or performing Massage Therapy within the City at the time this ordinance is enacted who does not meet the education requirements described above may be exempted by the City from such education requirements for thirty-six (36) months past the date of enactment as long as such individual meets the following conditions:

- (a) As of the date of enactment, such individual is currently practicing and has practiced Massage Therapy within the City during the previous twenty-four (24) months and can verify this through:
  - (1) Proof of receiving a Leawood business license to provide Massage Therapy within the City during the past twenty-four (24) months, or
  - (2) Proof that the individual declared income on the individual's tax return for performing and providing Massage Therapy within the City during the past twenty-four (24) months (Such individual shall sign an affidavit stating that the individual has submitted a true and accurate copy of the tax return filed with the I.R.S. and the State of Kansas and that the Massage Therapy was performed within the City); and
- (b) Such individual will provide all future Massage Therapy in conjunction with a Licensed Massage Establishment, and has applied for and meets all other licensing requirements for a Massage Therapist; and
- (c) Such individual is actively enrolled in and currently attending classes in a course of instruction in the theory, method or practice of Massage, in order to meet the City's educational requirements, or is signed up to take the National Certification Examination for Therapeutic Massage and Bodywork, as authorized above.

(Ord. 1867C; 06-19-00)

**5-516      Massage Therapy: Revocation or Suspension of License or Permit.**    A Massage Therapist License or Permit issued by the City may be revoked or suspended by the License Clerk after a public hearing before the License Clerk, or his designated representative, and a determination that:

- (a)    The provisions for the issuance of a Massage Therapist License or Permit are violated; or
- (b)    The Massage Therapist has been convicted of any offense discussed in this ordinance or any violent felony; or
- (c)    Any of the provisions of this ordinance are violated, including, but not limited to the application standards.

Before revoking or suspending the Massage Therapist License or Permit, the License Clerk shall give the Massage Therapist at least ten (10) days written notice of the charges and the opportunity to be publically heard by the License Clerk, or his designated representative, at which time the Licensee may present evidence in response to the charges, and the relevant facts regarding the occurrence of the conviction or offense shall be determined. All revocations or suspensions by the License Clerk are appealable to the Governing Body, provided said appeal must be in writing and delivered to the License Clerk within ten (10) days of the revocation or suspension, and further provided that such appeal shall be reviewed by the Governing Body within thirty (30) days from the date the appeal is submitted. If the Governing Body upholds the revocation or suspension, an appeal may then be made to the Johnson County District Court as provided by law within thirty (30) days after the review of the Governing Body.

(Ord. 1867C; 06-19-00)

**5-517-519      Reserved.**

(Ord. 1867C; 06-19-00)

**5-520      Massage Establishment: License.**

- (a)    **Generally.**    No person shall operate and conduct a Massage Establishment within the City without first obtaining a valid Massage Establishment License issued by the City pursuant to the provisions of this ordinance. To receive a License for operating and conducting a Massage Establishment, the applicant must meet the requirements as provided for hereafter. A Massage Establishment License specifically does not authorize the Licensee to perform and provide Massage Therapy without first obtaining a separate Massage Therapy License. A Massage Establishment License shall also be required to operate and conduct a business to perform and provide Out Calls.
- (b)    **Application.**    Applicants for a License to operate or conduct a Massage Establishment within the City shall file a written application with the License Clerk and pay a nonrefundable annual filing fee. This fee shall cover the cost of processing the application, not including the current FBI and KBI fingerprint fees. The application to operate a Massage Establishment shall contain the following:

*Note: the following informational requirements for applicants shall also be provided as applicable for each stockholder holding more than 10% of the stock, and each director or officer (if the applicant is a corporation), each partner or limited partner (if the applicant is a partnership), and any manager or other person principally in charge of the business operations of the proposed establishment.*

- (1) The name, address and telephone number of the applicant;
  - (2) Written evidence that the applicant is at least 18 years old;
  - (3) The applicant's weight, height, color of hair and eyes, and fingerprints (applicant will not be required to resubmit fingerprints on subsequent renewal applications);
  - (4) Two portrait photographs of the applicant (at least two inches by two inches);
  - (5) The position or function the applicant is being hired to (or will) perform within such establishment, and the exact nature of the services to be provided under the requested License (As applicable);
  - (6) The business, occupation, or employment of the applicant for the three years immediately preceding the date of application;
  - (7) Whether the applicant has ever been convicted of any crime (except minor traffic violations). If so, a statement must be made giving the place and court in which convicted, the offense, and the sentence imposed as a result of such conviction;
  - (8) The Massage Therapy and Massage Establishment License history of the applicant, and whether the applicant has in this or any other city or state previously had such license or similar authorization revoked or suspended. In such event, the applicant will provide the reason therefor, and the business activity or occupation subsequent to such action of suspension or revocation;
  - (9) The proposed place of business and facilities therefor;
  - (10) A list of all Massage Therapists working in the Massage Establishment and proof that such Massage Therapists are properly licensed (to be updated as necessary);
  - (11) 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; and
  - (12) Any other information deemed necessary by the City to review and process the application.
- (c) **Renewals.** An applicant seeking the renewal of an existing License only needs to provide the City with that information or documentation necessary to update the applicants' former application.

- (d) **Process of Application.** Applications for a Massage Establishment License shall be submitted to the License Clerk, who shall transmit copies of completed applications to the Chief of Police, the Neighborhood Services Administrator and the Building Official for their review and investigation. With the aid and input of the Chief of Police, the License Clerk shall determine whether the information contained in the application is accurate and whether the applicant is qualified to be issued (or reissued) the requested License. Such determination shall be made within fifteen (15) working days from the date the completed application is submitted. The Neighborhood Services Administrator and the Building Official shall determine whether the structure of the proposed Massage Establishment complies with the requirements and standards of all applicable health, zoning, building code, fire and property maintenance ordinances, and all other applicable codes, standards and zoning requirements, provided the premises need not be designed or set up for the requirements of a Massage Establishment on the date of application, provided further that such requirements for a Massage Establishment are met prior to the first day of business. The Neighborhood Services Administrator and the Building Official shall report their findings to the License Clerk within ten (10) working days from the date the application is submitted. Upon the determination of the qualifications of the applicant and the receipt of the reports of the Neighborhood Services Administrator and the Building Official, the License Clerk shall schedule the application for review by the Governing Body at the earliest date possible with consideration for notice requirements established by law, provided that the application shall be approved or disapproved within forty-five (45) days from the date the application is submitted. The applicant shall be notified in writing of the date of the review by the Governing Body, and will be afforded an opportunity to be heard at such time. If inspection items related to structural design of the premises cannot be verified prior to the review by the Governing Body, the application may be approved contingent upon a final inspection prior to the issuance of the License.
- (e) **Issuance of License.** The Governing Body shall review the application and shall approve the issuance of a License for a Massage Establishment, unless it is found that:
- (1) The applicant, any stockholders holding more than 10% of the stock or any director or officer (if the applicant is a corporation), any partner or limited partner (if the applicant is a partnership), or any manager or other person principally in charge of the operation of the business, has been convicted of, or diverted on, (i) a felony; (ii) an offense involving sexual misconduct with children; (iii) obscenity; (iv) promoting prostitution as defined by Kansas statute; (v) solicitation of a lewd or unlawful act; (vi) prostitution; (vii) pandering or other sexually related offense; or
  - (2) The applicant has knowingly made any false, misleading, or fraudulent statement of fact in the application or in any document required by the City in conjunction therewith; or
  - (3) The applicant has had a Massage Establishment License, a Massage Therapy License or any other similar license, permit or other authorization denied, revoked, or suspended by the City or any other state, city or local agency within five years prior to the date of the application; or

- (4) The applicant has previously been issued a license, permit or other authorization for an adult entertainment business (as defined by the Leawood Development Ordinance) or escort service, or has been employed by any such establishment; or
  - (5) 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; or
  - (6) The operation as proposed by the applicant would not comply with all applicable laws including, but not limited to, the City's code or building, zoning, and health ordinances and regulations; or
  - (7) The manager or other person principally in charge of the operation of the business would be ineligible to receive a License under the provisions of this ordinance; or
  - (8) Any other application requirement has not been met.
- (f) Upon approval of the application by the Governing Body, the License Clerk shall issue the Massage Establishment License that shall be nontransferable and nonrefundable. If the application is disapproved, the applicant shall be immediately notified by certified mail, return receipt requested, mailed to the last known mailing address of the applicant. The notice shall state the basis for the disapproval. Any applicant aggrieved by the disapproval may seek judicial review from the Johnson County District Court as provided by law within thirty (30) days after the date of the disapproval.

(Ord. 1867C; 06-19-00)

(Ord. 2758C; 11-02-15)

**5-521**

**Massage Establishment: Display of Licenses.** A Massage Establishment shall at all times display in an open and conspicuous place its Massage Establishment License. It shall also display in an open and conspicuous place either a copy of the Identification Card of all Massage Therapists working at the Massage Establishment, or an identified color picture (at least 4 inches by 4 inches) of each Massage Therapist that provides the same information.

- (a) **Inspection of Proposed Massage Establishment.** No business shall be operated or conducted at any proposed Massage Establishment, nor shall any Massage Establishment License be issued until an inspection by the Neighborhood Services Administrator, or the Building Official, or his/her authorized representative has been completed. . The Neighborhood Services Administrator, or the Building Official, or his/her authorized representative shall certify that the proposed Massage Establishment complies with all of the requirements of this ordinance and shall give such certification to the License Clerk; provided, however, that nothing contained herein shall be construed to eliminate other requirements of statute or ordinance concerning the maintenance of the premises, nor to preclude authorized inspection thereof.

- (b) **Supplemental Inspections.** The License Clerk, the Police Department, the Neighborhood Services Administrator, the Building Official or his/her authorized representative may from time to time make an inspection of each Licensed Massage Establishment in this City for the purposes of determining that the provisions of this ordinance are complied with. Such inspections shall be made at reasonable times and in a reasonable manner. It shall be unlawful for any Licensee to fail to allow such inspector immediate access to the premises or to hinder such inspector in any manner. Any failure on the part of a Licensee or employee to grant immediate access to such inspector shall be grounds for the revocation or suspension of any business or employee License.

(Ord. 1867C; 06-19-00)

**5-522      Massage Establishment: Inspection.**

- (a) **Inspection of Proposed Massage Establishment.** No business shall be operated or conducted at any proposed Massage Establishment, nor shall any Massage Establishment License be issued until an inspection by the Neighborhood Services Administrator, or the Building Official, or his/her authorized representative has been completed. . The Neighborhood Services Administrator, or the Building Official, or his/her authorized representative shall certify that the proposed Massage Establishment complies with all of the requirements of this ordinance and shall give such certification to the License Clerk; provided, however, that nothing contained herein shall be construed to eliminate other requirements of statute or ordinance concerning the maintenance of the premises, nor to preclude authorized inspection thereof.
- (b) **Supplemental Inspections.** The License Clerk, the Police Department, the Neighborhood Services Administrator, the Building Official or his/her authorized representative may from time to time make an inspection of each Licensed Massage Establishment in this City for the purposes of determining that the provisions of this ordinance are complied with. Such inspections shall be made at reasonable times and in a reasonable manner. It shall be unlawful for any Licensee to fail to allow such inspector immediate access to the premises or to hinder such inspector in any manner. Any failure on the part of a Licensee or employee to grant immediate access to such inspector shall be grounds for the revocation or suspension of any business or employee License.

(Ord. 1867C; 06-19-00)

**5-523      Massage Establishment: Facilities.** No business shall be operated or conducted at any Massage Establishment without first complying with the following with the minimum requirements:

- (a) **Massage Rooms.** Rooms in which Massage Therapy is to be practiced or administered shall have at least fifty (50) square feet of clear floor area and shall maintain a light level of not less than two (2) foot-candles as measured three (3) feet above the floor. Such rooms shall contain a door incapable of being locked from the exterior or interior. Such rooms, or rooms immediately adjacent thereto, shall be equipped with cabinets for the storage of clean linen and chemicals and approved receptacles for the storage of soiled linen.
- (b) **Dressing Rooms.** Provisions for a separate dressing room for each sex must be available within all Massage Establishments, with individual lockers for each employee. Doors to such dressing rooms shall open inward and shall be self-closing.

- (c) **Toilet Facilities.** Toilet facilities shall be provided in convenient locations. When five or more employees and Patrons of different sexes are on the premises at the same time, separate toilet facilities shall be provided. Urinals may be substituted for water closets after one water closet has been provided. The separate toilet facilities shall be designated as to the sex accommodated therein.
- (d) **Lavatories or Wash Basins.** Lavatories or wash basins shall be provided in either the toilet room or a vestibule with both hot and cold running water. Soap in a dispenser and sanitary towels shall also be provided.
- (e) **Cleanliness of Establishment.** Every portion of a Massage Establishment, including appliances, shall be kept clean and operated in a sanitary condition.
  - (1) The walls shall be clean, and the walls shall be 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.
  - (2) Wet and dry heat rooms, shower compartments and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs shall be thoroughly cleaned after each use.
- (f) **Towels and Linen.** When applicable, all Massage Establishments shall provide clean, laundered sheets and towels in sufficient quantity, and such items shall be laundered after each use thereof and stored in a sanitary manner. Towels, linen, and items for the personal use of employees and Patrons shall be clean and freshly laundered. Towels, cloths and sheets shall not be used for or by more than one Patron.

(Ord. 2548C; 07-02-12)

(Ord. 1867C; 06-19-00)

**5-524      Massage Establishment: Operation Regulations.** The operation of a Massage Establishment and the provision and performance of Massage Therapy 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. Out Calls prescribed by a licensed healing arts practitioner shall cease between the hours of 9:00 p.m. and 8:00 a.m. each day.
- (b) **Supervision.** The premises shall be 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 ordinance. The violation of any such provision by any agent or employee of the Licensee shall constitute a violation by the Licensee.
- (c) **Patron Attire.** No owner, manager, Massage Therapist or employee, while performing any task or service associated with the Massage Therapy, shall be present in any room with a Patron, or allow any other person to be present in a room with a Patron (excluding bathrooms, dressing rooms, or any room utilized for dressing purposes), unless the Patron's Specified Anatomical Areas are fully covered by towels, cloths or undergarments. Any contact with a Patron's genital area is strictly prohibited.

- (d) **Employee Attire.** While performing or available to perform Massage Therapy or related services, all employees and Massage Therapists shall be fully clothed and covered, modestly attired, clean, and wearing clean outer garments. For purposes of this subsection, fully clothed and covered means a state of dress in which the covering shall be of an opaque material. Diaphanous or transparent clothing is prohibited. Additionally, the clothing must cover the employees and the Massage Therapists' chests at all times, and extend from a point not to exceed four (4) inches above the center of the knee cap to the base of the neck. Finally, the clothing shall be maintained in a clean and sanitary condition.
- (e) **Identification Card.** All Massage Therapists shall be required to conspicuously display their valid Identification Card as required above.
- (f) **Danger to Safety or Health.** No service shall be given which is clearly dangerous or harmful in the opinion of the Chief of Police, the Neighborhood Services Administrator or the Building Official, to the safety or health of any person, and after such notice in writing has been delivered to the Licensee from such director or officer.
- (g) **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 Licensed Massage Establishment, or during any Out Call; 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 that no alcohol is permitted on that portion of the premises where the Massage Therapy occurs.
- (h) **Conduct of Business.** All Licensees licensed under the provisions of this ordinance shall at all times be responsible for the conduct of business at their Massage Establishment and for any act or conduct of their employees which constitutes a violation of the provisions of this ordinance. Any violation of the city, state, or federal laws committed on the premises by any such Licensee or employee affecting the eligibility or suitability of such person to hold a License may be grounds for suspension or revocation of same.

(Ord. 2391C; 04-20-09)

(Ord. 1867C; 06-19-00)

**5-525      Massage Establishment: Employee and Patron Registers.**

- (a) **Employees.** A Massage Establishment shall keep and maintain on the premises a current register of all employees showing such employee's name, address, position and license number (if applicable). Such register shall be open to inspection at all reasonable times by any city inspector or police officer.
- (b) **Patrons.** A Massage Establishment shall keep a daily register of all Patrons in a form approved by the License Clerk. Such register shall list the Patrons' names, addresses, hours of arrival, and, if applicable, the rooms or cubicles assigned. Said register shall at all times during business hours be subject to inspection by City inspectors and police officers, and shall be kept on file for one year.

(Ord. 1867C; 06-19-00)



**5-526**

- (a) **Operation of Massage Establishment.** Any commercial premises meeting the requirements herein may be licensed as a Massage Establishment to perform and provide Massage Therapy. Operation of such an establishment in a private residence or noncommercial business establishment is prohibited.
- (b) **Hotels and Motels.**

No hotel or motel may receive a Massage Establishment License.

(Ord. 1867C: 06-19-00)

**5-527**

A Massage Establishment License may be revoked or suspended by the Governing Body after a public hearing before the Governing Body, and a determination that:

- (a) A provision for the issuance of a Massage Establishment License has been violated; or
- (b) The Licensee or its employee, including a Massage Therapist, has been convicted of any offense discussed in this ordinance or any violent felony, and the Licensee has actual or constructive knowledge of the violation or conviction; or
- (c) The Licensee refused to permit a duly authorized police officer or city employee to inspect the premises or the operations of the Licensee; or
- (d) Any of the provisions of this ordinance are violated, including, but not limited to the application standards.

Before revoking or suspending a Massage Establishment License, the Governing Body shall give the Licensee at least ten (10) days written notice of the charges and the opportunity to be heard by the Governing Body, at which time the Licensee may present evidence in response to the charges. A Licensee aggrieved by the decision of the Governing Body may appeal the decision to the Johnson County District Court as provided by law within thirty (30) days after the date of the revocation or suspension.

(Ord. 1867C; 06-19-00)

# Title 2 BUSINESS REGULATIONS, LICENSE TAXES AND FEES

## Chapter 2-3 MASSAGE THERAPY AND LICENSING REQUIREMENTS

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### Article 2-3-A MASSAGE ESTABLISHMENT LICENSING AND OPERATIONS

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#### Section 2-3-A-1 ESTABLISHMENT LICENSE REQUIRED.

No person, firm, partnership, association or corporation shall operate a massage establishment, as defined in Article 2-3-D, without first having obtained a license therefor, issued by the 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 is not transferable or refundable, and shall be valid for a period of twelve months from the date of issuance.

#### Section 2-3-A-2 APPLICATION FOR ESTABLISHMENT LICENSE; FEES.

- A. Every applicant for a license to maintain, operate or conduct any massage establishment covered by this Chapter; hereinafter defined as an "establishment applicant" in Article 2-3-D, shall file a completed application packet, as provided by the City. Each establishment (other than otherwise licensed businesses set forth in Section 2-3-A-13 herein) shall be responsible to pay the initial application fee to the City, which is set by separate resolution of the Governing Body. The application fee shall not be refundable.

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

In addition to the foregoing, every establishment applicant for an establishment license shall furnish all information required in the application packet including, but not limited to the following:

1. Written proof that all establishment applicant(s) and all managers are at least 18 years of age.
2. The business, occupation or employment locations and contact information for each establishment applicant and manager for the three (3) years immediately preceding the date of application.
3. The massage establishment and/or massage therapist license history of all establishment applicants and managers; whether such persons, in previously operating in this or another city or state under an establishment or therapist license, has had such license revoked or suspended, and the reason therefor.
4. For each establishment applicant and manager, disclosure of any criminal convictions or diversions, except minor traffic violations, fully disclosing the jurisdiction in which convicted or diverted and the offense for which convicted or diverted.

5. Evidence of applicant's ability to secure a lease for the space and contact information for the landlord, where applicable.
  6. A copy of the State of Kansas Certificate of Good Standing, where applicable.
  7. A fully-completed application for a Certificate of Occupancy, where applicable.
  8. Completion and/or execution of all documentation in the application packet and payment of the application fees.
  9. 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 packet and the qualifications of the establishment applicants for the license and the managers to work in a massage establishment.
- B. In the case of any establishment applicant who intends to personally to provide massage therapy services at the establishment, as in-clients' office services, and/or in-clients' homes, each such establishment applicant must also apply for and receive a massage therapist license as provided for in [Article 2-3-B](#).

### **Section 2-3-A-3 ESTABLISHMENT LICENSE APPLICATION PROCESSING.**

Upon receipt of a completed application packet for a massage establishment license, a copy of the application shall be transmitted to the Chief of Police for investigation of the application. 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 establishment applicants are qualified to be issued the license applied for. The Chief of Police shall report the results of the investigation to the Community Development Department not later than twenty-one (21) days from the date the completed application packet is received by the City, unless good cause exists to extend this period of time.

### **Section 2-3-A-4 APPROVAL OF ESTABLISHMENT LICENSE; DENIAL THEREOF.**

After the filing of a completed establishment application packet, the City shall approve the issuance of an establishment license unless the City finds that:

- A. The correct license fee has not been tendered to the City, or, in the case of a check or bank draft, it has not been honored with payment upon presentation.
- B. The establishment, as proposed by the establishment applicant(s), if permitted, would not comply with all applicable laws including, but not limited to, the City's zoning and county and State health regulations.
- C. Any establishment applicant or manager 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 or equivalent charge;
  6. Solicitation of a lewd or unlawful act;
  7. Prostitution;
  8. Pandering or other sexually related offense; or
  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 immediately preceding the date of the application.
- D. An establishment applicant made a false, misleading, or fraudulent statement of fact in the license application packet.

- E. Any establishment applicant or manager has had a massage establishment or therapist permit or license denied, revoked or suspended or has voluntarily surrendered the permit or license in lieu of revocation or suspension by the City or any other state or local agency within ten (10) years prior to the date of 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. Any establishment applicant or manager has not attained the age of 18 years.
- H. The establishment applicant has failed to successfully complete the applicable Health and Safety, building and/or fire safety inspections within ninety (90) days of filing the application.
- I. There are facts present related to a familial, personal or professional relationship between the establishment applicant and any individual who has previously been denied a license or had a license revoked, suspended or non-renewed and is unable to maintain an establishment license under this Chapter, which reasonably indicate that the establishment's operations would be influenced by that/those individual(s).

The records of the City shall show the action taken on the application.

If the application is denied, the establishment applicant(s) shall be immediately notified by United States first class mail, postage prepaid, mailed to the establishment applicant's mailing address as identified in the application packet (which cannot be the intended establishment address, with the exception of an intended establishment in the applicant's home).

Upon denial, any establishment applicant shall be ineligible to reapply for any license under this Chapter for a period of one year from the date of denial. A denied establishment applicant can seek a waiver of the one year ineligibility from the Chief of Police, in writing, upon a showing of good cause or other relevant factors.

Any establishment applicant aggrieved by a denial of an application or a denial of a request for a waiver may seek judicial review of the decision pursuant to Kansas law.

### **Section 2-3-A-5 MESSAGE ESTABLISHMENT HEALTH AND SAFETY REGULATIONS.**

In addition to the operation provisions set forth in [Section 2-3-A-8](#) herein, every massage establishment is subject to the following health and safety regulations:

- A. All establishment walls should be clean and painted. In all areas where water or steam baths are provided, the walls shall be clean and painted with washable, mold-resistant paint.
- B. No area where therapy is conducted may be fitted solely with a door that can be locked. If a therapy area has two or more doors of entrance, it is acceptable for one door to have a lock provided at least one door of entrance is incapable of locking.
- C. Toilet facilities shall be provided in convenient locations. When five (5) or more establishment representatives, as that term is defined in [Article 2-3-D](#), and patrons are on the premises at the same time, separate toilet facilities shall be provided for men and women.
- D. Lavatories or wash basins with both hot and cold running 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.
- E. At least one drinking facility shall be available to employees. Drinking facilities shall be a drinking fountain, water cooler, or bottled water cooler. Drinking facilities shall not be located in toilet rooms or bathrooms.
- F. There shall be no appliances installed in an establishment exceeding 110v with the exception of clothing dryers.

### **Section 2-3-A-6 INSPECTIONS NECESSARY PRIOR TO OPERATION OF BUSINESS.**

Prior to approval of an establishment application, the City will conduct a Health and Safety inspection of the final establishment set up. The City will confirm that the establishment set up complies with the requirements

of Section 2-3-A-5 herein and any other applicable provisions of this Chapter.

In addition and as applicable, a building and/or fire safety inspection will be conducted of the premises. The license will not be approved, and the establishment will not be able to conduct business, until and unless the establishment has successfully completed all required inspections within ninety (90) days of filing the application. If all inspections are not successfully completed within this timeframe the application will be denied.

If an inspection is scheduled and the establishment applicant (or representative) fails to be present, a re-inspection fee will be assessed.

### **Section 2-3-A-7 ESTABLISHMENT IDENTIFICATION CARDS.**

All establishment applicants and managers shall, at all times when working in an establishment, have in their possession a valid identification card issued by the City. Licensees and managers shall produce their identification cards for inspection upon request of any City representative or person who by law may inspect the same. The holder shall not alter an identification card in any way or at any time.

Identification cards for establishment applicants and managers shall have expiration dates corresponding to the establishment licensed expiration. One (1) establishment applicant and one (1) manager card will be provided as part of the application fee. Additional cards will be charged a separate nonrefundable fee.

### **Section 2-3-A-8 OPERATION REGULATIONS.**

The operation of any massage establishment shall be subject to the following regulations:

- A. The licensee shall have the premises supervised at all times when open for business by him/herself or an establishment representative acting as a manager. The licensee or manager shall personally supervise the business, and shall not violate or permit others to violate any applicable provision of this Chapter. Any violation of this Chapter by any establishment representative shall constitute a violation by the licensee.
- B. Such business shall be closed and operations shall cease between the hours of 10:00 p.m. and 6:00 a.m. each day.
- C. No service shall be offered or provided which is clearly dangerous or harmful to the safety or health of any person, in the opinion of the City Administrator, after written notice has been delivered to the licensee from the City Administrator.
- D. No alcoholic beverages or cereal malt beverages, nor the consumption thereof, shall be allowed, permitted, or suffered in or upon establishment premises. This restriction shall not apply to businesses where the licensed massage therapy is accessory to the predominant business purpose of the establishment, provided no alcohol is permitted on that portion of such premises where massage therapy occurs. As used in this Section, "that portion" shall mean physical, visual and audible separation by permanently installed walls and doors between the area where massage therapy occurs and the area where alcoholic beverages or cereal malt beverages are sold or consumed.
- E. Every licensee shall at all times be responsible for the conduct of business on his/her licensed premises and for any act or conduct of his/her establishment representatives, which constitutes a violation of the provisions of this Chapter, regardless of whether or not the licensee is physically present at the time of the violation. Any violation of the city, state, or federal laws committed on the licensed premises by any licensee or establishment representative affecting the eligibility or suitability of the licensee to hold a license or may be grounds for suspension or revocation of same.
- F. All licensees and establishment representatives shall be clean, and wear clean, modest outer garments while at the establishment. Diaphanous or transparent clothing is prohibited. Clothing must cover the licensee's and establishment representatives' chests, buttocks and genital area at all times.
- G. Every portion of a licensed establishment, including appliances and personnel, shall be kept clean and operated in a sanitary condition.

- H. A patron's pubic region, human genitals, perineum, anal region, and the area of the female breast that includes the areola and nipple must be covered at all times by opaque towels, sheets, cloths, or undergarments when in the presence of a licensee or establishment representative. This subsection does not apply to momentary nudity of a patron occurring in shower areas or dressing or locker rooms, outside the presence of the massage therapist.
- I. Any contact by a licensee or establishment representative with a patron's pubic region, human genitals, perineum, anal region, or the area of the female breast that includes the areola and nipple is strictly prohibited.
- J. Clean, laundered sheets and towels shall be provided to patrons for use. Such items shall be laundered after each use thereof and stored in a sanitary manner.
- K. Wet and dry heat rooms, showers and other bathing compartments, and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs or individual soaking areas shall be thoroughly cleaned after each use.
- L. Table showers are strictly prohibited.
- M. No establishment 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 to the establishment by a parent or legal guardian, the parent or legal guardian remains at the establishment during the massage, and the parent or legal guardian has authorized such therapy in writing.
- N. All establishments shall keep and maintain on their premises a current register of all establishment representatives showing each individual's name, home address, license number and containing a copy of the therapist's license and government-issued identification. Such register shall be open to inspection at all reasonable times by any City representative.
- O. All establishments shall keep and maintain on their premises a register of services provided, listing each patron's first and last name, home address or phone number, and the first and last name of the establishment representative who performed the service. As an alternative to a single establishment register all licensed therapists can maintain their own register of services provided, listing each patron's first and last name, home address or phone number. Regardless of whether there is a single or multiple registers for the establishment, every register shall be maintained on-site. Each year's register(s) shall be kept on file for one year after the completion of the year. All registers maintained pursuant to this provision shall be open for inspection by any City representative with consent, exigency, or pursuant to an administrative search order or subpoena.
- P. No establishment shall place, publish, or distribute or cause to be placed, published or distributed, any advertising that reasonably suggests to prospective patrons that any service is available or that the licensee or any establishment representative would provide any service or satisfy any request for actions which are prohibited by this Chapter.
- Q. No individual shall reside, inhabit or otherwise sleep overnight at an establishment with the exception of a licensee who operates an establishment in his/her home or residence. With respect to licensees who operate an establishment out of his/her home or residence, no individual living in the home or residence shall reside, inhabit or otherwise sleep in the portion of the home or residence that is devoted to the practice of massage therapy.
- R. The establishment shall comply at all times with the Health and Safety Regulations set forth in [Section 2-3-A-5](#) above.

## **Section 2-3-A-9 OPERATIONS INSPECTIONS; IMMEDIATE RIGHT OF ENTRY.**

City representatives may, from time to time, make an inspection of each licensed establishment in this City, for the purposes of determining that the provisions of this Chapter are complied with. Such inspections shall be made at reasonable times and in a reasonable manner. Prior notice of the City's intention to conduct such inspections is not required. It shall be unlawful for any licensee to fail to allow immediate access to the



premises or to hinder an inspection in any manner, and any such behavior by the licensee or manager shall result in revocation or suspension of the establishment license and any appropriate therapists licenses.

### **Section 2-3-A-10 RESTRICTION OF BUSINESS TO PREMISES.**

- A. All massage therapy (excluding in-clients' office or in-clients' home massage, as those terms are defined in [Article 2-3-D](#)) provided for under this Chapter shall be conducted on the premises of a licensed massage establishment.
- B. Subject to subsection C herein, all licensed massage establishments shall be operated from a commercial business location.
- C. An establishment can be operated from the therapist's home or residence provided that the location is properly licensed as a massage establishment and otherwise complies with this Chapter and the City's home occupation requirements set forth in Section 4-1-B-24-F.

### **Section 2-3-A-11 APPLICABILITY TO EXISTING BUSINESSES.**

Existing massage establishments are required to bring operations into compliance with all provisions of [Article 2-3-A](#) by August 1, 2014.

### **Section 2-3-A-12 RENEWAL OF LICENSES; EFFECT OF LAPSE.**

Establishment licensees are required to apply for an annual renewal of the license at least twenty-one (21) calendar days prior to the expiration date of the license by completing and submitting the renewal paperwork packet. The renewal paperwork packet is similar to the application packet, but is abbreviated and meant to provide the City with any information that has changed or been updated since the original application.

The City will make reasonable efforts to notify licensees of an upcoming expiration of a license, but the City's failure to provide such notice or the failure to receive such notice shall not relieve the licensee from the requirement to file all required renewal paperwork at least twenty-one (21) calendar days prior to expiration of the current license to prevent any lapse. The fee for an annual establishment license is set by separate resolution of the Governing Body. The renewal fee shall be nonrefundable.

If a lapse in the license term occurs, a licensee will be required to apply for a new establishment license pursuant to the provisions of this Chapter.

### **Section 2-3-A-13 OTHERWISE LICENSED BUSINESSES.**

Businesses which provide massage therapy services as an accessory service to the predominant business purpose of the establishment, and which are categorized and qualified to operate by the City under a different business license type, must complete and provide all documentation required of a massage therapy establishment. Otherwise licensed businesses will be subjected to annual inspections of the business to ensure they are in compliance with this Chapter. Otherwise licensed business will not be subject to any establishment fees other than reinspection fees.

### **Section 2-3-A-14 EXCEPTIONS.**

The provisions of this [Article 2-3-A](#) shall not apply to hospitals, nursing homes, or sanitariums.

### **Section 2-3-A-15 TRANSFER OF LICENSES. Rep. Ord. 5373, eff. 05/27/2014**

Repealed by Ordinance No. 5373, effective 05/27/2014.

## **Article 2-3-B MASSAGE THERAPIST LICENSING AND OPERATIONS**

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## **Section 2-3-B-1 THERAPIST LICENSE REQUIRED.**

No person shall perform massage therapy, as defined in Article 2-3-D, in an establishment, in a client's office, or in a client's home, without first having obtained a license therefor, issued by the City. 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.

## **Section 2-3-B-2 THERAPIST LICENSE EDUCATION REQUIREMENTS; EXEMPTION.**

To qualify for a Massage Therapist license, an applicant must demonstrate that he/she has satisfied one of the following educational requirements:

- A. Successful completion of a course of instruction, consisting of not less than 500 hours, in the theory, method or practice of massage, from one or more accredited schools, as defined in Article 2-3-D. All practical and/or modality instruction must be completed as in-classroom/hands-on instruction, while theory instruction can be completed online. Proof of completion must be made by certified transcript(s) signed by the school registrar, either presented with a raised seal or faxed or emailed directly to the City by the school; or
- B. Proof of successful passage of the Board Certification exam administered by the National Certification Board for Therapeutic Massage & Bodywork (NCBTMB).

Individuals licensed with the City as a Massage Therapist for at least five (5) consecutive years as of the effective date of this Chapter may renew that license notwithstanding an inability or failure to satisfy the minimum education requirements set forth above, and continue to renew such license so long as there are no lapses in active licensure and the individual continues to satisfy all other requirements of this Chapter.

## **Section 2-3-B-3 CPR AND FIRST AID CERTIFICATION REQUIRED.**

Every therapist license applicant must have proof of successful completion of an in-person (not online) certification program in American Heart Association CPR and American Red Cross first aid and provide current proof of certification.

## **Section 2-3-B-4 APPLICATION FOR THERAPIST LICENSE; FEE**

- A. Any person who desires to perform or provide massage therapy in an establishment, in-clients' office or in-clients' homes, shall file a completed application packet, as provided by the City, and pay an initial application fee to the City, which is set by separate resolution of the Governing Body. This application fee shall not be refundable.
- B. Only one application packet and therapist license shall be required for a massage therapist regardless of the number of location types where he/she intends to practice - in an establishment, in-clients' office and/or in-clients' home. However, a separate identification card is required for each location type. The fee for each identification card subsequent to the initial one is set by separate resolution of the Governing Body. This identification card fee shall not be refundable.
- C. The applicant for a therapist license shall furnish all information required in the application packet including, but not limited to, the following:
  1. Name, home address, and telephone number.
  2. Applicant's weight, height, color of hair and eyes.
  3. Written evidence that the applicant is at least 18 years old.
  4. The business, occupation or employment location and contact information for the applicant for the three (3) years immediately preceding the date of application.
  5. Disclosure of any criminal convictions or diversions, except minor traffic violations, fully disclosing the jurisdiction in which convicted or diverted and the offense for which convicted or diverted.



6. Identification of the location types where the applicant intends to provide services (in establishment, in-clients' office, in-clients' homes). If applicable, identification of the position, specific therapies and other functions for which the individual is being hired for each location type.
7. Proof of satisfaction of the education requirements set forth in [Section 2-3-B-2](#).
8. Proof of satisfaction of the CPR and first aid requirements set forth in [Section 2-3-B-3](#).
9. A copy of valid government-issued identification card issued by the State of Kansas or Missouri.
10. The [message establishment](#) and/or [therapist license](#) history of the applicant 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, and the reason therefor.
11. Completion and/or execution of all documentation in the application packet and payment of the application fee.
12. 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 packet and the qualifications of the [applicant](#) for the license.

### **Section 2-3-B-5 THERAPIST LICENSE APPLICATION PROCESSING.**

Upon receipt of a completed application packet for a [message therapist license](#), a copy of the application shall be transmitted to the Chief of Police for investigation of the application. 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 applied for. The Chief of Police shall report the results of the investigation to the Community Development Department not later than twenty-one (21) days from the date the completed application packet is received by the City, unless good cause exists to extend this period of time.

### **Section 2-3-B-6 APPROVAL OF THERAPIST LICENSE; DENIAL THEREOF.**

After the filing of a completed [therapist application packet](#), the City shall approve the issuance of a [therapist license](#) unless the City finds that:

- A. The correct license fee has not been tendered to the City, or, in the case of a check or bank draft, honored with payment upon presentation.
- B. The [applicant](#) 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 or equivalent charge;
  6. Solicitation of a lewd or unlawful act;
  7. Prostitution;
  8. Pandering or other sexually related offense; or
  9. Any violation of the law applicable to [message therapy](#) arising out of the individual's prior [message establishment\(s\)](#) or individual [message therapist license\(s\)](#) in the ten (10) years immediately preceding the date of the application.

- C. The applicant made a false, misleading, or fraudulent statement of fact in the license application packet.
- D. The applicant has had a massage establishment or therapist permit or license denied, revoked or suspended or has voluntarily surrendered the permit or license in lieu of revocation or suspension by the City or any other state or local agency within ten (10) years prior to the date of application.
- E. The applicant has been issued a license for an adult entertainment business or escort service, or has been employed by any such establishment within ten (10) years prior to the date of application.
- F. The applicant has not attained the age of 18 years.
- G. The applicant does not satisfy one or more of the other requirements set forth in this Chapter.

The records of the City shall show the action taken on the application.

If the application is denied, the applicant shall be immediately notified by United States first class mail, postage prepaid, mailed to the applicant's home mailing address as identified in the application packet, which cannot be the establishment address, with the exception of an establishment in the therapist's home.

Upon denial, the applicant shall be ineligible to reapply for any license under this Chapter for a period of one year from the date of denial. A denied applicant can seek a waiver of the one year ineligibility from the Chief of Police, in writing, upon a showing of good cause or other relevant factors.

Any applicant aggrieved by a denial of an application or a denial of a request for a waiver may seek judicial review of the decision pursuant to Kansas law.

## Section 2-3-B-7 THERAPIST IDENTIFICATION CARDS AND FEES.

- A. Upon approval and issuance of a massage therapist license, the City shall issue the therapist an identification card bearing the therapist's license number identifier, physical description, and a photograph.
- B. A different identification card is required for each type of location a therapist practices - in-establishment, in-clients' office and in-clients' homes. Any therapist requiring more than one (1) identification card will be assessed a nonrefundable fee for each additional card.
- C. Therapists shall have their appropriate City-issued identification card in their possession at all times when working, and shall produce such identification for inspection upon request of any City representative or person who by law may inspect the same.
- D. The holder shall not alter an identification card in any way or at any time.

## Section 2-3-B-8 THERAPIST REGULATIONS.

Massage therapists shall be subject to the following regulations when providing services:

- A. The therapist shall not violate any applicable provision of this Chapter.
- B. A therapist shall not provide massage therapy on clients between the hours of 10:00 p.m. and 6:00 a.m. each day.
- C. No service shall be offered or provided which is clearly dangerous or harmful to the safety or health of any person, in the opinion of the City Administrator, after notice in writing has been delivered to the therapist from the City Administrator.
- D. A therapist shall not consume any alcoholic beverages or cereal malt beverages during business hours or while providing massage services. A therapist shall not provide alcoholic beverages or cereal malt beverages to patrons during or as part of the massage services.
- E. Any violation of the city, state, or federal laws committed by a therapist affecting his/her eligibility or suitability to hold a license may be grounds for suspension or revocation of same.

- F. All therapists shall be clean, and wear clean, modest outer garments while providing services. Diaphanous or transparent clothing is prohibited. Clothing must fully cover the therapist's chest at all times.
- G. A patron's pubic region, human genitals, perineum, anal region, and the area of the female breast that includes the areola and nipple must be covered at all times by opaque towels, sheets, cloths, or undergarments when in the presence of a therapist.
- H. Any contact by a therapist with a patron's pubic region, human genitals, perineum, anal region, and the area of the female breast that includes the areola and nipple is strictly prohibited.
- I. Table showers are strictly prohibited.
- J. No therapist shall perform or permit any massage therapy to be provided to a person under the age of 18 unless that individual is accompanied to the establishment by a parent or legal guardian, the parent or legal guardian remains at the establishment during the massage, and the parent or legal guardian has authorized such therapy in writing.
- K. All therapists shall keep and maintain a register of services provided as in-clients' office or in-clients' home massage, listing the location type, each patron's first and last name, home address or phone number. All registers maintained pursuant to this provision shall be open for inspection by any City representative with consent, exigency, or pursuant to an administrative search order or subpoena. Each year's register shall be kept on file for one year after the completion of the year.
- L. No therapist shall place, publish, or distribute or cause to be placed, published, or distributed, any advertising that reasonably suggests to prospective patrons that any service is available or that the therapist would provide any service or satisfy any request for actions which are prohibited under this Chapter.

### **Section 2-3-B-9 THERAPIST INSPECTIONS; IMMEDIATE RIGHT OF ENTRY.**

City representatives may, from time to time, make an inspection of each licensed establishment in this City, for the purposes of determining that the provisions of this Chapter are complied with. That may include inspection of areas where a therapist performs massage therapy. Such inspections shall be made at reasonable times and in a reasonable manner. Prior notice of the City's intention to conduct such inspections is not required. It shall be unlawful for a therapist to fail to allow immediate access to the establishment premises (or any area therein) or to hinder an inspection in any manner, and any such behavior by the therapist shall result in revocation or suspension of the therapist's license pursuant to Section 2-3-C-4.

The City also may, from time to time, conduct inspections into in-clients' office and in-clients' home locations where a therapist provides services. Such inspections shall be made at reasonable times and in a reasonable manner. Prior notice of the City's intention to conduct such inspections is not required. It shall be unlawful for a therapist to hinder any such inspection in any manner, and any such behavior by the therapist shall result in revocation or suspension of the therapist's license pursuant to [Section 2-3-C-4](#).

### **Section 2-3-B-10 CHANGE OF EMPLOYMENT OR LOCATION TYPE.**

For up-to-date recordkeeping, a therapist shall notify the City of any change in employment within thirty (30) calendar days of the change. This shall include a change in the therapist's employer, or the addition or reduction of location types (i.e. establishment, in-clients' office, or in-clients' homes). The therapist will be required to get a new badge from the City and pay all applicable fees.

### **Section 2-3-B-11 CONTINUING EDUCATION REQUIREMENT.**

Upon completion of a therapist's first year of City licensure, he/she will thereafter be required to complete a minimum of twelve (12) hours (50 minutes per hour) of continuing education annually in order to qualify for a renewal of his/her license. Continuing education credit will be awarded for each hour of training completed in the theory and clinical application of massage, clinical business practices, hygiene, record keeping, professional

ethics, and other similar courses. Credits to be used toward this continuing education requirement must be received from an [accredited school](#), as defined in [Article 2-3-D](#), but can be completed as online coursework.

## **Section 2-3-B-12 RENEWAL OF LICENSE; EFFECT OF LAPSE.**

Therapists are required to apply for an annual renewal of his/her license at least twenty-one (21) calendar days prior to the expiration date of the license by completing and submitting the renewal paperwork packet.

The City will make reasonable efforts to notify licensees of an upcoming expiration of a license, but the City's failure to provide such notice or the failure to receive such notice shall not relieve the licensee from the requirement to file all required renewal paperwork at least twenty-one (21) calendar days prior to expiration of the current license. If the application cannot be approved by the expiration date because it was not submitted at least twenty-one (21) days prior to the expiration date, the licensee must cease all operations on the expiration date until notification that the application has been approved by the City.

Approval of a renewal application is subject to satisfaction of the requirements of [Section 2-3-B-6](#). Upon denial of a renewal application, any therapist shall be ineligible to reapply for any license under this Chapter for a period of one year from the date of denial. A denied therapist can seek a waiver of the one year ineligibility from the Chief of Police, in writing, upon a showing of good cause or other relevant factors. Any therapist aggrieved by a denial of an application or a denial of a request for a waiver may seek judicial review of the decision pursuant to Kansas law.

If a therapist does not file renewal paperwork prior to the license's expiration date the license will lapse and he/she must cease all operations. If a lapse occurs, the therapist will be required to apply for a new therapist license pursuant to the provisions of this Chapter.

The fee for an annual therapist license renewal is set by separate resolution of the Governing Body. The renewal fee shall be non-refundable.

## **Section 2-3-B-13 APPLICABILITY TO EXISTING THERAPISTS.**

Existing [massage therapists](#) must bring his/her practice into compliance with all provisions of [Article 2-3-B](#) upon the date of his/her next annual renewal or August 1, 2014, whichever is sooner.

## **Section 2-3-B-14 EXCEPTIONS.**

The education provisions of [Section 2-3-B-2](#) and the CPR and First Aid provisions of [Section 2-3-B-3](#) shall not apply to 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, or persons licensed to practice as a physical therapist under the laws of this state. All other provisions of this [Article 2-3-B](#) apply to these individuals.

# **Article 2-3-C VIOLATIONS OF CHAPTER; PENALTY**

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## **Section 2-3-C-1 BASIS FOR ESTABLISHMENT LICENSE REVOCATION OR SUSPENSION.**

Any license issued for a massage therapy establishment may be revoked or suspended by the City where it is found that any of the provisions of this Chapter are violated or the licensee or any [establishment representative](#) has been 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 from conducting any investigation or inspection provided for in this Chapter.

## Section 2-3-C-2 ESTABLISHMENT REVOCATION AND SUSPENSION PROCEEDINGS.

- A. The City, before revoking or suspending any establishment license, shall give the licensee at least ten (10) calendar days' written notice of the charges against him/her and the opportunity to request a hearing before the City Administrator at which time the licensee may present evidence bearing upon the question. In such cases, the charges shall be specific and in writing.
- B. Upon request of a hearing pursuant to Subsection A. herein, the hearing will be set by the City as soon as is reasonably practicable, and the rules, regulations and procedures for the hearing will be provided to the licensee.
- C. The City Administrator may uphold the revocation or suspension; or may rescind the revocation or suspension, and if applicable, specify certain conditions and stipulations associated therewith.
- D. Any establishment licensee aggrieved by the City Administrator's decision under this Section may seek judicial review of the decision pursuant to Kansas law.

## Section 2-3-C-3 BASIS FOR THERAPIST LICENSE REVOCATION OR SUSPENSION.

Any massage therapist license issued may be revoked or suspended by the City where it is found that any of the provisions of this Chapter are violated or the therapist has been convicted of any offense which would make them ineligible to receive a license; or in any case, in which the therapist refused to permit, or hindered, any City representative from conducting any investigation or inspection provided for in this Chapter.

## Section 2-3-C-4 THERAPIST REVOCATION AND SUSPENSION PROCEEDINGS.

- A. The City, before revoking or suspending any therapist license, shall give the licensee at least ten (10) calendar days' written notice of the charges against him/her and the opportunity to request a hearing before the City Administrator at which time the licensee may present evidence bearing upon the question. The charges shall be specific and in writing.
- B. Upon request of a hearing pursuant to Subsection A. herein, the hearing will be set by the City as soon as is reasonably practicable, and the rules, regulations and procedures for the hearing will be provided to the licensee.
- C. The City Administrator may uphold the revocation or suspension; or may rescind the revocation or suspension, and if applicable, specify certain conditions and stipulations associated therewith.
- D. Any massage therapist aggrieved by the City Administrator's decision under this Section may seek judicial review of the decision pursuant to Kansas law.

## Article 2-3-D DEFINITIONS AND MISCELLANEOUS PROVISIONS

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### Section 2-3-D-1 DEFINITIONS.

When used in this Chapter, the following words and terms shall have the meanings ascribed to them in this Section:

**ACCREDITED SCHOOL:** any school or institute of learning which is accredited by a state board of education or equivalent, and approved by any state massage-specific licensing organization(s). 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 Chapter.

**ESTABLISHMENT APPLICANT:** In regard to the "applicant" for an establishment license, this term shall refer to each individual owner, if applying as an individual or a group of individuals; each stockholder holding more



than 10% of the stock of the corporation and each officer and director, if the applicant is a corporation; each partner, including limited partners, if the applicant is a partnership.

**ESTABLISHMENT REPRESENTATIVE:** an employee, manager, independent contractor, unpaid volunteer or anyone else holding him/herself out as working at, or on behalf of, a massage establishment.

**CERTIFICATE TO PRACTICE THE HEALING ARTS** a license issued to an individual pursuant to K.S.A. 65-2801 et seq. to practice medicine and surgery, osteopathic medicine and surgery or chiropractic.

**IN-CLIENTS' HOME MASSAGE:** massage therapy conducted at a client's home or residence.

**IN-CLIENTS' OFFICE MASSAGE:** massage therapy conducted on the business premises of a therapist's clients, but in no event is a massage therapist allowed to conduct massage therapy in a hotel or motel room or similar setting.

**MASSAGE THERAPY (or MASSAGE):** any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external parts of the human body with the hands or other parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances, or with or without supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice. The regulation of massage therapy in this Chapter includes, but is not limited to, subspecialties of massage therapy such as acupressure, aromatherapy, healing touch, cupping, reiki, reflexology, rolfing and trigger point. Massage therapy does not include the touching in any fashion of a patron's pubic region, human genitals, perineum, anal region, and the area of the female breast that includes the areola and nipple.

**MASSAGE THERAPIST (or THERAPIST):** a person who, for consideration, engages in the practice of massage therapy as defined herein.

**MASSAGE THERAPY ESTABLISHMENT (or MASSAGE ESTABLISHMENT or ESTABLISHMENT):** Any establishment where any person, firm, partnership, association or corporation primarily engages in offering massage therapy services. An establishment may operate from a business or corporate location or in the establishment licensee's home, subject to the requirements of this Chapter.

**MINOR TRAFFIC VIOLATIONS:** any violation classified as a traffic infraction or ordinance traffic infraction pursuant to K.S.A. 8-2118(c), and amendments thereto.

## **Section 2-3-D-2 MISCELLANEOUS PROVISIONS.**

- A. As used in this Chapter, any City employee title or name means the incumbent or his/her designee.
- B. The City Administrator may, after presentation to the Governing Body, make and enforce reasonable rules and regulations not in conflict with, but to carry out, the intent of this Chapter.

## **Article 2-3-E REGULATIONS ON OPERATIONS Rep. Ord. 5373, eff. 05/27/2014**

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### **Section 2-3-E-1 PERSONS UNDER EIGHTEEN PROHIBITED FROM PREMISES. Rep. Ord. 5373, eff. 05/27/2014**

Repealed by Ordinance No. 5373, effective 05/27/2014.

### **Section 2-3-E-2 RESTRICTION TO LICENSED PREMISES. Rep. Ord. 5373, eff. 05/27/2014**

Repealed by Ordinance No. 5373, effective 05/27/2014.

## **Article 2-3-F PENALTY FOR VIOLATIONS Rep. Ord. 5373, eff. 05/27/2014**

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### **Section 2-3-F-1 PENALTY. Rep. Ord. 5373, eff. 05/27/2014**

Repealed by Ordinance No. 5373, effective 05/27/2014.

## **Article 2-3-G DEFINITIONS Rep. Ord. 5373, eff. 05/27/2014**

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### **Section 2-3-G-1 DEFINITIONS. Rep. Ord. 5373, eff. 05/27/2014**

Repealed by Ordinance No. 5373, effective 05/27/2014.

**CHAPTER 5.36**

**MASSAGE THERAPY**

**Sections:**

5.36.010	Definitions.
5.36.020	Massage Therapy Establishment License Required.
5.36.030	Massage Therapist License Required.
5.36.040	Limitation on Off-Site Massage Therapy.
5.36.045	Student Massage Therapy
5.36.050	Application for Massage Therapy Establishment License.
5.36.060	Application for Massage Therapist License.
5.36.070	Massage Therapist Education Requirements.
5.36.080	Issuance of Massage Therapy Establishment License.
5.36.090	Issuance of Massage Therapist License.
5.36.100	Suspension of Massage Therapy Establishment License.
5.36.105	Revocation of Massage Therapy Establishment License.
5.36.110	Suspension of Massage Therapist License.
5.36.115	Revocation of Massage Therapist License.
5.36.130	Inspections, Immediate Right of Entry.
5.36.140	Massage Therapy Establishment Regulations.
5.36.150	Massage Therapist Regulations.
5.36.190	Transfer of Licenses, Other Licenses and Fees.
5.36.195	Change of Location.
5.36.210	Exceptions.
5.36.220	Further Regulations.
5.36.240	Penalty.
5.36.250	Appeal.

**5.36.010 Definitions.**

"Conviction" means being found guilty or entering into a diversion agreement or deferred judgment agreement.

"Employee" means any person, other than a massage therapist, who renders any service for or on behalf of a licensee under this Chapter and/or who receives compensation from the licensee or a patron.

"Healing arts practitioner" is defined by the provisions of K.S.A.65-2801, et. seq.

"Health official" means any person employed by the City of Olathe and designated by the City Manager to enforce and administrate the provisions of this Chapter.

"Massage therapist" means any person who, for any consideration whatsoever, engages in massage therapy.

"Massage therapy" means any method which may include but is not specifically limited to stroking, kneading, tapping, compression, vibration, rocking, friction, pressure, and those techniques based on manipulation or the application of pressure to the muscular structure or soft tissues of the human body, which may also include non-forceful passive or active movement and/or the application of techniques intended to affect the energetic systems of the body. The use of oils, lotions, powders, or other lubricants may also be included. "Massage therapy" does not mean the touching, in any fashion, of a patron's pubic region, genitals, perineum, anal region, and/or the female breast.

"Massage therapy establishment" means any establishment licensed hereunder where any person, firm, partnership, association, or corporation engages in massage therapy for compensation.



“Minor traffic violation” means any violation classified as a traffic infraction or ordinance traffic infraction pursuant to K.S.A. 8-2118(c), and amendments thereto.

“Off-site massage therapy” means massage therapy that is provided by a massage therapist on the business premises of a massage patron.

“Operator” means any owner, manager, individual, licensee, person, and/or employee principally in charge of a massage therapy establishment at any given time.

“Patron” means any person who utilizes or receives the services of any massage therapist and/or massage therapy establishment subject to the provisions of this Chapter and under such circumstances that it is reasonably expected he or she will pay money or give any other consideration therefor.

“Police officer” means any duly authorized law enforcement officer employed by the City of Olathe.

“Table shower” means an activity in which a patron is washed by a massage therapist.

“UDO” means the Unified Development Ordinance. (Ord. 15-60 § 1, 2015.)

**5.36.020 Massage Therapy Establishment License Required.** No person, firm, partnership, association or corporation can operate a massage therapy establishment without a valid massage therapy establishment license issued by the City. A licensee must have a separate license for each place of business. A license is valid for a period of twelve (12) months from the date of issuance. (Ord. 15-60 § 2, 2015.)

**5.36.030 Massage Therapist License Required.**

A. No person can provide massage therapy in any massage therapy establishment unless he or she has a valid massage therapist’s license issued by the City pursuant to the provisions of this Chapter.

B. No person can provide off-site massage therapy without a valid massage therapist license issued by any jurisdiction which issues such licenses, and the licensing standards are at least as comprehensive as the City’s licensing requirements as set forth in Section 5.36.090. (Ord. 15-60 § 3, 2015.)

**5.36.040 Limitation on Off-site Massage Therapy.** The authority granted a licensee issued a massage therapy establishment or massage therapist license allows off-site massage therapy. The patron must be fully clothed. (Ord. 15-60 § 4, 2015.)

**5.36.045 Student Massage Therapy.** An individual actively enrolled in and currently attending classes in a course of instruction in the theory, method or practice of massage, may provide massage therapy as a practicum component of the training program, provided the following conditions are met:

A. The massage therapy is under the supervision of a licensed massage therapist. For the purposes of this Section, supervision means the supervising therapist is observing the student providing massage therapy on a patron.

B. All advertisements for massage therapy that will be provided by a student must clearly inform the patron that the massage therapy will be provided by a student under the supervision of a licensed massage therapist.

C. Prior to providing massage therapy, the student massage therapist will require the patron to sign an acknowledgement that he/she has been informed the massage therapy will be provided by a student under the supervision of a licensed massage therapist. These acknowledgement documents will be maintained by the supervising massage therapist for a period of one (1) year and will be produced at the request of any health official or police officer.

D. All student massage therapy must occur at a licensed massage therapy school. Under no circumstances are students permitted to provide in-home massage therapy.

E. No student massage therapist may receive any consideration whatsoever for providing massage therapy. (Ord. 15-60 § 5, 2015.)

#### **5.36.050 Application for Massage Therapy Establishment License.**

A. Every applicant for a massage therapy establishment license to operate a massage therapy establishment must file an application with the City Clerk and pay a non-refundable fee. Such fee will be established by the Governing Body by resolution.

B. The application for a massage therapy establishment license will set forth the exact nature of the services to be provided, the proposed place of business, and the name, address, and telephone number of each applicant and any operator.

C. In addition to the foregoing, any applicant for a massage therapy establishment license must furnish the following information:

1. Written evidence that the applicant and the operator(s) of the business are at least eighteen (18) years old by providing a copy of a current state or federal issued form of identification;
2. Social Security number, weight, height, color of hair and eyes of the applicant and operator(s);
3. Business, occupation, or employment of the applicant for the three (3) years immediately preceding the date of application;
4. The massage therapy establishment license history of the applicant; whether the applicant while previously operating in this or another city or state under license has had such license denied, suspended or revoked, or has voluntarily surrendered the license in lieu of revocation or suspension by a city or any state or local agency within ten (10) years prior to the date of application and the reason why the license was denied, revoked, suspended or voluntarily surrendered;
5. All criminal offenses (except minor traffic violations) charged against the applicant or any criminal offenses charged on, against or related to any massage therapy establishment which applicant was operating or employed by, in this or another city or state within ten (10) years prior to the date of application, fully disclosing the place and court where the criminal offense occurred, the disposition of the criminal offense, and the circumstances thereof.

D. The applicant must provide written authorization for the City, its agents and employees to seek information and investigate the truth of the statements set forth in the application and the qualifications of the applicant and the operator(s) for the license.

E. In the case of applicants who personally provide massage therapy, the applicant must also apply for and receive a massage therapist license as required in Section 5.36.030 A.

F. Upon submission of a request for renewal on a form provided by the City and a fee, an expiring massage therapy establishment license may be renewed by the City Clerk if there has been no change in ownership. Such fee will be adopted by the Governing Body by resolution. All requests for renewal must be received by the City at least thirty (30) days prior to the expiration of the license.

If the renewal request is not received at least thirty (30) days prior to the expiration, the City Clerk may be unable to process the renewal request prior to the expiration of the license. The renewal form will require a notarized statement that there have been no criminal offenses (except minor traffic violations) charged against the applicant or criminal offenses charged on, against or related to the massage therapy establishment within the preceding twelve (12) months.

G. No suspended license will be renewed. If a suspended license lapses during a suspension period, a new application for a massage therapy establishment license may only be filed upon the expiration of the period of suspension. (Ord. 15-60 § 6, 2015.)

### **5.36.060 Application for Massage Therapist License.**

A. Any person who engages or intends to engage in massage therapy for any consideration whatsoever must file a written application with the City Clerk and pay a non-refundable fee. Such fee will be adopted by the Governing Body by resolution.

B. All applications for a massage therapist license must contain the following information:

1. Name, address, and telephone number;
2. Name, address, and telephone number of employing establishment;
3. Applicant's Social Security number, weight, height, color of hair and eyes;
4. Written evidence that the applicant is at least eighteen (18) years old by providing a copy of a current state or federal issued form of identification;
5. Business, occupation, or employment of the applicant for the three (3) years immediately preceding the date of application;
6. Whether the applicant has ever been charged with any criminal offense (except minor traffic violations). If the applicant has been charged with any criminal offense, a statement must be made giving the place and court where the person was charged and the disposition of such criminal offense;
7. The massage therapist license history of the applicant, including, but not limited to, whether the applicant has:
  - a. had such license denied, suspended or revoked;
  - b. voluntarily surrendered the license in lieu of revocation or suspension by a city or any state or local agency within ten (10) years prior to the date of application;
  - c. if the license was denied, suspended, revoked or voluntarily surrendered, then the reason why the license was denied, revoked, suspended or voluntarily surrendered;
8. The position or function the applicant is being hired to provide within the employing establishment.

C. The applicant must provide written authorization for the City, its agents, and employees to seek information and investigate the truth of the statements set forth in the application and the qualifications of the applicant for the license.

D. Upon submission of a request for renewal, on a form provided by the City, and a fee, an expiring massage therapist license may be renewed by the City Clerk. Such fee will be adopted by the Governing Body by resolution. All requests for renewal must be received by the City at least thirty (30) days prior to expiration of the license. If the renewal request is not received at least (30) days prior to expiration, the City Clerk may be unable to process the renewal request prior to the expiration of the license. The renewal form will require a notarized statement that the applicant has not been charged with any criminal offense (except minor traffic violations) within the preceding twelve (12) months.

E. No suspended license will be renewed. If a suspended license lapses during a suspension period, a new application for a massage therapist license may only be filed upon the expiration of the period of suspension. (Ord. 15-60 § 7, 2015.)

### **5.36.070 Massage Therapist Education Requirements.**

A. A massage therapist licensed in accordance with this Chapter must be certified by the National Certification Board for Therapeutic Massage & Bodywork (NCBTMB) or pass the Massage & Bodywork Licensing Examination (MBLEx). This Section will be effective from and after the passage and publication of this ordinance as provided by law for all new massage therapist applicants and upon license renewal in 2017 for existing massage therapists licensed after January 1, 1996.

B. Massage therapists licensed in accordance with this Chapter prior to January 1, 1996 are subject to the educational requirements set forth in this subsection unless the massage therapist can demonstrate that he or she has been licensed continuously since January 1, 1996. (Ord. 15-60 § 8, 2015.)

### **5.36.080 Issuance of Massage Therapy Establishment License.**

A. After the filing of an application in the proper form and completion of a criminal background investigation, the City Clerk will examine the application, and after such examination, will issue a license for a massage therapy establishment unless the City Clerk finds that:

1. The applicant or operator of the establishment has a conviction for:
  - a. a felony; or
  - b. a misdemeanor in the last five (5) years for any of the following:
    1. domestic violence
    2. a person criminal offense
    3. a drug violation
    4. a second or subsequent DUI
    5. furnishing alcohol to minors; or
  - c. an offense involving sexual misconduct; including but not limited to obscenity, solicitation of a lewd or unlawful act, or prostitution; or
2. The applicant or operator of the establishment:
  - a. is currently on probation or diversion or has a deferred judgment for any criminal offense listed in this Section; or
  - b. has an active warrant for arrest for any criminal offense listed in this Section; or
  - c. is currently charged with any criminal offense listed in this Section; or
  - d. 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; or
  - e. has voluntarily surrendered a massage therapy establishment license or similar permit in lieu of revocation or had a license or permit revoked or a license or permit is currently suspended, by a city or any state or local agency; or
  - f. fails to disclose information in response to questions in the license application; or
3. The correct fee has not been paid to the City; or
4. The operation, as proposed by the applicant, if permitted, would not comply with all applicable laws, including, but not limited to, the City's building, zoning, and health regulations; or
5. The applicant or operator(s) of the business are not over the age of eighteen (18) years;  
and
6. The applicant or operator(s) of the business would be ineligible to receive a license under the provisions of this Chapter.

B. Any massage therapy establishment license issued under the provisions of this Chapter must be displayed at all times by the licensee in an open and conspicuous place in the massage therapy establishment.

C. Renewal applications are subject to the same criteria as an original application except as provided otherwise in Sections 5.36.050 F. and 5.36.050 G. (Ord. 15-60 § 9, 2015.)

### **5.36.090 Issuance of Massage Therapist License.**

A. After the filing of an application in the proper form and completion of a criminal background investigation, the City Clerk will examine the application, and after such examination, will issue a massage therapist license unless the City Clerk finds that:

1. The applicant for the massage therapist license has a conviction for:

- a. a felony; or
- b. a misdemeanor in the last five (5) years for any of the following:

- 1. domestic violence
- 2. a person criminal offense
- 3. a drug violation
- 4. a second or subsequent DUI
- 5. furnishing alcohol to minors; or

c. an offense involving sexual misconduct; including but not limited to obscenity, solicitation of a lewd or unlawful act, or prostitution; or

2. The applicant:

- a. is currently on probation or diversion or has a deferred judgment for any criminal offense listed in this Section; or
- b. has an active warrant for arrest for any criminal offense listed in this Section; or
- c. is currently charged with any criminal offense listed in this Section; or
- d. 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; or
- e. has voluntarily surrendered a massage therapist license or similar permit in lieu of revocation or had a license or permit revoked or a license or permit is currently suspended, by a city or any state or local agency; or
- f. fails to disclose information in response to questions in the license application; or
- g. has not been certified by the National Certification Board for Therapeutic Massage & Bodywork (NCBTMB) or has not passed the Massage & Bodywork Licensing Examination (MBLEx); or

3. The correct fee has not been paid to the City.

B. Any massage therapist license issued under the provisions of this Chapter must be displayed at all times by the licensee in an open and conspicuous place in the massage therapy establishment.

C. Renewal applications are subject to the same criteria as an original application except as provided otherwise in Sections 5.36.060 D. and 5.36.060 E. All requests for renewal must be received by the City at least thirty (30) days prior to expiration of the license. If the renewal request is not received at least thirty (30) days prior to expiration, the City Clerk may be unable to process the renewal request prior to the expiration of the license. (Ord. 15-60 § 10, 2015.)

### **5.36.100 Suspension of Massage Therapy Establishment License.**

A. Any license issued by the City Clerk for a massage therapy establishment may be suspended by the City Clerk or designated representative after a public hearing before the City Clerk or designated representative where it is found that:

- 1. any of the provisions of this Chapter have been violated; or
- 2. the licensee or operator has been charged with a criminal offense found in Sections 5.36.080 or 5.36.090; or
- 3. the licensee or operator refused to permit any police officer or health official to inspect the premises during any hours when the establishment was open to the public.

B. The City Clerk or designated representative, before suspending a massage therapy establishment license, will give the licensee at least ten (10) days' written notice of the alleged license violations and the opportunity for a public hearing before the City Clerk or designated representative, at which time the licensee may present evidence. The decision of the City Clerk or designated representative is final, unless the licensee files an appeal in accordance with Section 5.36.250.

C. A suspension based on a charged criminal offense is effective until a court of competent jurisdiction rules on the criminal offense, unless the licensee files an appeal in accordance with Section 5.36.250. (Ord. 15-60 § 11, 2015.)

#### **5.36.105 Revocation of Massage Therapy Establishment License.**

A. Any license issued by the City Clerk for a massage therapy establishment may be revoked by the City Clerk or designated representative after a public hearing before the City Clerk or designated representative where it is found that:

1. any of the provisions of this Chapter have been violated; or
2. the licensee or operator, including a massage therapist, has a conviction for a criminal offense found in Sections 5.36.080 or 5.36.090; or
3. the licensee or operator refused to permit any police officer or health official of the City to inspect the premises during any hours when the establishment was open to the public.

B. The City Clerk or designated representative, before revoking a massage therapy establishment license, will give the licensee at least ten (10) days' written notice of the alleged license violations and the opportunity for a public hearing before the City Clerk or designated representative, at which time the licensee may present evidence. The decision of the City Clerk or designated representative is final, unless the licensee files an appeal in accordance with Section 5.36.250. (Ord. 15-60 § 12, 2015.)

#### **5.36.110 Suspension of Massage Therapist License.**

A. A massage therapist license issued by the City Clerk may be suspended by the City Clerk or designated representative after a public hearing before the City Clerk or designated representative, where it is found that:

1. the massage therapist has violated any of the provisions of this Chapter; or
  2. the massage therapist has been charged with a criminal offense found in Section 5.36.090;
- or
3. the massage therapist refused to permit any police officer or health official to inspect the premises during any hours when the establishment was open to the public.

B. The City Clerk or designated representative before suspending a massage therapist license, will give the massage therapist at least ten (10) days' written notice of the alleged license violations and the opportunity for a public hearing before the City Clerk or designated representative, at which time the massage therapist may present evidence. The decision of the City Clerk or designated representative is final, unless the massage therapist files an appeal in accordance with Section 5.36.250.

C. A suspension based on a charged criminal offense is effective until a court of competent jurisdiction rules on the criminal offense, unless the massage therapist files an appeal in accordance with Section 5.36.250. (Ord. 15-60 § 13, 2015.)

#### **5.36.115 Revocation of Massage Therapist License.**

A. A massage therapist license issued by the City Clerk may be revoked by the City Clerk or designated representative after a public hearing before the City Clerk or designated representative, where it is found that:

1. the massage therapist has violated any of the provisions of Chapter; or
2. the massage therapist has a conviction for a criminal offense found in Section 5.36.090; or
3. the massage therapist refused to permit any police officer or health official to inspect the premises during any hours when the establishment was open to the public.

B. The City Clerk or designated representative before revoking a massage therapist license, will give the massage therapist at least ten (10) days' written notice of the alleged license violations and the opportunity for a public hearing before the City Clerk or designated representative, at which time the massage therapist may present evidence. The decision of the City Clerk or designated representative is final, unless the massage therapist files an appeal in accordance with Section 5.36.250. (Ord. 15-60 § 14, 2015.)

#### **5.36.130 Inspections, Immediate Right of Entry.**

A. Any health official and/or police officer may from time to time make an inspection of each licensed massage therapy establishment in this City for the purposes of determining compliance with the provisions of this Chapter. Such inspections will be during any hours when the establishment is open to the public.

B. It is unlawful for any licensee, operator, or massage therapist to deny any health official or police officer immediate access to the premises or to hinder an inspection in any manner.

C. Any failure on the part of any licensee, operator, or massage therapist to grant immediate access to any health official or police officer is grounds for the suspension or revocation of any massage therapy establishment license and/or massage therapist license.

D. The suspension and/or revocation procedure provided for in Sections 5.36.100, 5.36.105, 5.36.110, and/or in 5.36.115 may be initiated if an inspection reveals a violation of any provision of this Chapter. (Ord. 15-60 § 16, 2015.)

**5.36.140 Massage Therapy Establishment Regulations.** The operation of any massage therapy establishment will be subject to the following regulations:

A. The licensee will have the massage therapy establishment supervised at all times when open for business by himself/herself or an operator. The licensee or operator will personally supervise the establishment, and will not violate or permit others to violate any applicable provision of this Chapter.

B. Every licensee will at all times be responsible for the conduct of business on the licensed massage therapy establishment premises and for any act or conduct of an operator, massage therapist or employee, which constitutes a violation of the provisions of this Chapter. Any violation of the city, state or federal laws committed on the licensed premises by any licensee, operator, massage therapist or employee affecting the eligibility or suitability of the licensee to hold a license, may be grounds for suspension or revocation of same.

C. The massage therapy establishment will be closed and operations will cease between the hours of twelve (12) a.m. and six (6) a.m.

D. No alcoholic or cereal malt beverages, nor the possession or consumption thereof, will be allowed in or upon the massage therapy establishment premises.

E. All licensees, operators, massage therapists and employees will wear outer garments while at the establishment. Diaphanous or transparent clothing is prohibited. All licensees, operators, massage therapists and employees must be fully clothed at all times.

F. A licensed establishment must be kept clean and operated in a sanitary manner.

G. A patron's pubic region, genitals, perineum, anal region, and/or the female breast must be covered at all times by opaque towels, sheets, cloths or undergarments when in presence of a licensee, operator, massage therapist or employee.

H. Any contact by a licensee, operator, massage therapist or employee with a patron's pubic region, genitals, perineum, anal region, and/or the female breast is prohibited.

I. Clean, laundered sheets and towels will be provided to patrons for use. Such items will be laundered after each use thereof and stored in a sanitary manner.

J. Wet and dry heat rooms, showers, and other bathing compartments, and toilet rooms will be thoroughly cleaned each day the massage therapy establishment is in operation. Bathtubs or individual soaking areas will be thoroughly cleaned after each use.

K. Table showers are prohibited.

L. All massage therapy establishments and/or operators of massage therapy establishments will keep and maintain on the premises a current register of all massage therapists showing each individual's name, home address, telephone number, license number and a copy of the therapist's license and government-issued identification. Such register will be open to inspection during business hours by any health official or police officer.

M. All operators of a massage therapy establishment will keep a daily register at the massage therapy establishment of all patrons, with names, addresses, telephone numbers, and parental or legal guardian authorization (if applicable). Said daily register will, at all times during business hours, be subject to inspection by any health official or police officer and must be kept on file for one (1) year from the date of each entry.

N. No massage therapy establishment operator or employee will place, publish, distribute or cause to be placed, published or distributed, any advertisement offering or suggesting the availability of any service which is either prohibited or not authorized under this Chapter.

O. No individual will reside, inhabit or otherwise sleep overnight at a massage therapy establishment.

P. No operator or employee will permit the provision, offer to provide or provide to any patron any service with the intent to arouse or gratify the sexual desires of the operator, massage therapist, employee or patron. (Ord. 15-60 § 17, 2015.)

**5.36.150 Massage Therapist Regulations.** Massage therapists are subject to the following regulations when providing services:

A. The massage therapist will not violate any applicable provision of this Chapter.

B. A massage therapist will not provide massage therapy on patrons between the hours of twelve (12) a.m. and six (6) a.m.

C. A massage therapist will not consume any alcoholic or cereal malt beverages during business hours or while providing massage therapy.

D. Any violation of the city, state or federal laws committed by a therapist affecting his/her eligibility or suitability to hold a license may be grounds for suspension or revocation of same.

E. All massage therapists will wear outer garments while providing massage therapy. Diaphanous or transparent clothing is prohibited. The massage therapist must be fully clothed at all times.



F. A patron's pubic region, genitals, perineum, anal region, and the female breast must be covered at all times by opaque towels, sheets, cloths or undergarments when in the presence of the massage therapist.

G. Any contact by a massage therapist with a patron's pubic region, genitals, perineum, anal region, and/or the female breast is prohibited.

H. Table showers are prohibited.

I. A massage therapist will not provide or permit any massage therapy to be provided to a patron under the age of eighteen (18) unless the patron is accompanied to the massage therapy establishment by a parent or legal guardian, and the parent or legal guardian authorizes the massage therapy in writing.

J. No massage therapist will place, publish, distribute or cause to be placed, published or distributed, any advertisement offering or suggesting the availability of any service which is either prohibited or not authorized under this Chapter.

K. A massage therapist will notify the City Clerk of any change in massage therapy establishment employment within thirty (30) calendar days of the change.

L. No massage therapist will permit the provision, offer to provide or provide to any patron any service with the intent to arouse or gratify the sexual desires of the massage therapist or patron.

M. A massage therapist will keep a daily register at the massage therapy establishment of all patrons, with names, addresses, telephone numbers, and parental or legal guardian authorizations (if applicable). Said daily register will at all times during business hours be subject to inspection by any health official or police officer and must be kept on file for one (1) year from the date of each entry. (Ord. 15-60 § 18, 2015.)

#### **5.36.190 Transfer of Licenses, Other Licenses and Fees.**

A. A massage therapy establishment license is not transferable and such authority as a license confers shall be conferred only on the licensee named therein.

B. Any applications made, fees paid, and licenses obtained under the provisions of this Chapter are in addition to and not in lieu of any other fees or licenses required to be paid or obtained under any other ordinances of this City. (Ord. 15-60 § 22, 2015.)

**5.36.195 Change of Location.** If a licensee desires to change the location of the massage therapy establishment, the licensee will file an application with the City Clerk providing the same information relating to the proposed location as in the case of an original application. A fee for change of location will be adopted by the Governing Body by resolution. If the application is in proper form and complies with applicable zoning requirements of the UDO and all other requirements relating to the massage therapy establishment are met, a new license will be issued for the new location for the balance of the year for which a current license is held by the licensee. (Ord. 15-60 § 23, 2015.)

**5.36.210 Exceptions.** The provisions of this Chapter do not apply to hospitals, nursing homes, sanitariums, or persons holding an unrevoked certificate to practice the healing arts under the laws of this state, or persons working under the direction of any such persons or in any such establishment, nor does this Chapter apply to barbers or cosmetologists, as prescribed under K.S.A. 65-1901d, lawfully carrying out their particular profession or business and holding a valid, unrevoked license or certificate of registration issued by this state. (Ord. 15-60 § 25, 2015.)

**5.36.220 Further Regulations.** The City Clerk or the health official may make and enforce reasonable rules and regulations not in conflict with, but to carry out, the intent of this Chapter. (Ord. 15-60 § 26, 2015.)

**5.36.240 Penalty.** Any person convicted of violating any of the provisions of this Chapter is guilty of an unclassified public offense and will be fined not more than Five Hundred Dollars (\$500.00) for each offense, and may be imprisoned for a period not to exceed one hundred eighty (180) days for each offense, or may be both fined and imprisoned. A separate offense will be deemed committed on each day during or which a violation occurs or continues. (Ord. 15-60 § 28, 2015.)

**5.36.250 Appeal.**

A. If the City Clerk or designated representative denies issuance of a license, or issues an order suspending or revoking a license, the licensee, up to but not more than fifteen (15) days after the order, may appeal such denial or order to the City Manager or designated representative.

B. If the City Manager or designated representative issues an order upholding the denial, suspension, or revocation of the license, the licensee, up to but not more than thirty (30) days after the order, may appeal the order to the District Court of Johnson County.

C. Any appeal taken under this Section will stay the order of suspension or revocation of the license. (Ord. 15-60 § 29, 2015.)

Previous massage therapy codes were codified with the following ordinances. (Ord. 13-40, 2013; Ord. 08-14, 2008; Ord. 05-46, 2005; Ord. 03-37, 2003; Ord. 02-124, 2002; Ord. 02-87, 2002; Ord. 96-75, 1996; Ord. 92-07, 1992; Ord. 531, 1976.)

## TITLE 5 - BUSINESS LICENSES AND REGULATIONS

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### 5.50 MASSAGE THERAPY

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- 5.50.015 Reference to Chief of Police, Other Staff. (Repealed)
- 5.50.020 License Required. (Repealed)
- 5.50.021 Limitations on In-office Massage Therapy Licenses. (Repealed)
- 5.50.030 Massage Therapist License Required, Categories, Educational Requirements, Restrictions. (Repealed)
- 5.50.035 Student Massage Therapy. (Repealed)
- 5.50.040 Application for Massage Therapy and In-office Massage Therapy Business License; Fees. (Repealed)
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- 5.50.560 Transfer of Licenses; Other Licenses and Fees.
- 5.50.570 Penalty.
- 5.50.580 Severability.

#### **5.50.010 Definitions. (Repealed)**

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Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §1, 94; MP-1682 §1, 91; MP-862 §1, 76)

#### **5.50.015 Reference to Chief of Police, Other Staff. (Repealed)**

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Repealed.

(History: Ord. MP-2790 §30, 2008; MP-2208 §1, 2000)

#### **5.50.020 License Required. (Repealed)**

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Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §2, 94; MP-1734 §1, 92; MP-1682 §2, 91; MP-862 §2, 76)

#### **5.50.021 Limitations on In-office Massage Therapy Licenses. (Repealed)**

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Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §3, 94; MP-1682 §3, 91)

#### **5.50.030 Massage Therapist License Required, Categories, Educational Requirements, Restrictions. (Repealed)**

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Repealed.

(History: Ord. MP-2790 §30, 2008; MP-2045 §1, 97; MP-1971 §1, 96; MP-1911 §1, 95; MP-1842 §4, 94; MP-862 §3, 76)

#### **5.50.035 Student Massage Therapy. (Repealed)**

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Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1971 §2, 96)

#### **5.50.040 Application for Massage Therapy and In-office Massage Therapy Business License; Fees. (Repealed)**

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Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §5, 94; MP-1734 §2, 92; MP-1682 §4, 91; MP-862 §4, 76)

#### **5.50.050 Application for Massage Therapist License; Fees. (Repealed)**

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Repealed.

(History: Ord. MP-2790 §30, 2008; MP-2103 §1, 98; MP-1842 §6, 94; MP-1734 §3, 92; MP-1682 §5, 91; MP-1482 §1, 87; MP-862 §5, 76)

#### **5.50.060 Education Requirements; Masseur or Masseuse. (Repealed)**

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Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §7, 94; MP-1682 §6, 91; MP-862 §6, 76)

#### **5.50.065 Massage Therapy Business License Application Processing. (Repealed)**

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Repealed.

(History: Ord. MP-2790 §30, 2008; MP-2065 §1, 97; MP-2045 §2, 97; MP-1842 §8, 94)

#### **5.50.070 Identification Cards. (Repealed)**

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Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §9, 94; MP-862 §7, 76)

#### **5.50.080 Issuance of Massage Therapy Business License. (Repealed)**

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Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §10, 94; MP-1682 §7, 91; MP-862 §8, 76)

#### **5.50.090 Application Processing and Issuance of Massage Therapist License. (Repealed)**

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Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §11, 94; MP-1682 §8, 91; MP-862 §9, 84)

#### **5.50.100 Revocation or Suspension of Business License. (Repealed)**

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Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §12, 94; MP-1682 §9, 91; MP-862 §10, 76)

#### **5.50.110 Revocation of Massage Therapist License. (Repealed)**

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Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §13, 94; MP-1682 §10, 91; MP-862 §11, 76)

#### **5.50.120 Inspection Necessary. (Repealed)**

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Repealed.

(History: Ord. MP-2790 §30, 2008; MP-2065 § 2, 97; MP-2045 § 3, 97; MP-1842 §14, 94; MP-1682 §11, 91; MP-862 §12, 76)

#### **5.50.130 Inspections, Immediate Right of Entry. (Repealed)**

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Repealed.

(History: Ord. MP-2790 §30, 2008; MP-2045 § 4, 97; MP-1842 §15, 94; MP-1682 §12, 91; MP-862 §13, 76)

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#### **5.50.140 Operation Regulations. (Repealed)**

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Repealed.

(History: Ord. MP-2790 §30, 2008; MP-2117 §1, 98; MP-2045 § 5, 97; MP-1842 §16, 94; MP-1682 §13, 91; MP-862 §14, 76)

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#### **5.50.150 Supervision. (Repealed)**

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Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §17, 94; MP-862 §15, 76)

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#### **5.50.160 Employee and Patron Registers. (Repealed)**

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Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §18, 94; MP-862 §16, 76)

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#### **5.50.170 Persons Under Age 18 Prohibited Services. (Repealed)**

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Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §19, 94; MP-1682 §14, 91; MP-862 §17, 76)

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#### **5.50.180 Advertising. (Repealed)**

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Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §20, 94; MP-862 §18, 76)

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#### **5.50.190 Transfer of Licenses; Other Licenses and Fees. (Repealed)**

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Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §21, 94; MP-1682 §15, 91; MP-862 §19, 76)

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#### **5.50.200 Applicability to Existing Businesses. (Repealed)**

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Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §22, 94; MP-1682 §16, 91; MP-862 §20, 76)

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#### **5.50.210 Exceptions. (Repealed)**

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Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1911 §2, 95; MP-1812 §1, 93; MP-1682 §17, 91; MP-862 §21, 76)

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#### **5.50.220 Further Regulations. (Repealed)**

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Repealed.

(History: Ord. MP-2790 §30, 2008; MP-2045 § 6, 97; MP-1842 §23, 94; MP-1682 §18, 91; MP-862 §22, 76)

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#### **5.50.230 Restriction of Business to Premises. (Repealed)**

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Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §24, 94; MP-1734 §4, 92; MP-1682 §19, 91; MP-862 §23, 76)

### 5.50.240 Penalty. (Repealed)

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Repealed.

(History: Ord. MP-2790 §30, 2008; MP-862 §24, 76)

### 5.50.250 Severability. (Repealed)

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Repealed.

(History: Ord. MP-2790 §30, 2008; MP-862 §25, 76)

### 5.50.300 Definitions.

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- A. **Business premises.** Those premises where a private or public commercial enterprise is conducted.
- B. **In-home massage.** Massage that is conducted in a private residence of a massage client or a therapist's home or residence that is permitted as a home occupation and is licensed as a massage establishment.
- C. **In-office massage.** 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.
- D. **In-office massage establishment.** Any establishment having a place of business where any person, firm, partnership, association, or corporation engages in the activities mentioned in Section 5.50.300E for compensation.
- E. **Massage.** 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.
- F. **Massage establishment.** Any establishment where any person, firm, partnership, association, or corporation engages in or carries on or permits to be engaged in or carried on any of the activities mentioned in Section 5.50.300E for compensation but does not include "in-office massage establishments."
- G. **Minor Traffic Violations** mean any violation classified as a traffic infraction or ordinance traffic infraction pursuant to K.S.A. 8-2118(c), and amendments thereto.
- H. **Massage therapist.** Any person who, for any consideration whatsoever, engages in the practice of massage as herein defined.
- I. **Patron** means any person over 18 years of age who utilizes or receives the services of any establishment subject to the provisions of this Chapter and under such circumstances that it is reasonably expected that he or she will pay money or give any other consideration therefor, 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 has authorized such therapy in writing.
- J. **Table shower.** An activity in which a patron lies on a table and is washed by an attendant.

(History: Ord. MP-2790 §1, 2008)

### 5.50.310 Reference to Chief of Police, Other Staff.

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Any reference in this Chapter to the Chief of Police, City Clerk, Community Planning & Services Director, Director of Planning & Development, Deputy City Manager or Fire Inspector shall include those persons' designees and any individuals designated by the City Manager.

(History: Ord. MP-2790 §2, 2008)

### **5.50.320 Business License Required.**

No person, firm, partnership, association or corporation shall operate a message establishment or an in-office message business, as defined herein, without first having obtained a license therefor, issued by the City Clerk. 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 months from the date of issuance.

(History: Ord. MP-2790 §3, 2008)

### **5.50.330 Limitations on In-office Massage Licenses.**

The authority granted a licensee issued an in-office message license is limited to the authority to conduct message therapy on the non-permanent office premises of the licensee's clients and specifically does not include the authority to conduct message therapy at a permanent premises operated by the licensee; provided the licensee must have a permanent business office located within the City.

(History: Ord. MP-2790 §4, 2008)

### **5.50.340 Application for Message Establishment and In-office Message License; Fees.**

Every applicant for a license to maintain, operate or conduct any establishment covered by this Chapter shall file an application with the City Clerk and pay an annual filing fee to the City Clerk of \$300 per business. The fees shall not be refundable.

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 therefor, and the name, address, and telephone number of each applicant, including any stockholder holding more than 10% of the stock of the corporation, any partner, when a partnership is involved, and any manager.

In addition to the foregoing, any applicant for an establishment license shall furnish the following information:

- A. Written proof that the applicant is at least 18 years old.
- B. Two passport photographs at least two inches by two 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 of the applicant for the three years immediately preceding the date of application.
- D. The message establishment and in-office message business license history of the applicant; whether such person, in previously operating in this or another city or state under license, has had such license revoked or suspended, the reason therefor, and the business activity or occupation subsequent to such action of suspension or revocation.
- E. Any criminal convictions, except minor traffic violations, fully disclosing the jurisdiction in which convicted and the offense for which convicted and circumstances thereof.
- F. In the case of applicants who intend personally to provide in-office message or message therapy, the applicant must also apply for and receive a message therapist license as provided for in Section 5.50.500.
- G. 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.
- H. Applicants for renewal of an existing license need provide only that information or documentation necessary to insure up-to-date renewal application processing.

(History: Ord. MP-2790 §5, 2008)



### **5.50.350 Massage Establishment License Application Processing.**

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- A. Upon receipt of a complete application for a massage establishment license, the City Clerk shall immediately transmit one copy of the application to the Chief of Police for investigation of the application. In addition, the City Clerk shall transmit a copy of the application to the Community Planning & Services Manager, the Director of Planning & Development Services and the Fire Inspector.
- B. 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 applied for. The Chief of Police shall report the results of the investigation to the City Clerk not later than 21 days from the date the application is received by the City Clerk.
- C. It shall be the duty of the Community Planning & Services Manager, the Director of Planning & Development Services and the Fire Inspector 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, and fire ordinances of the City. All standards for premises set forth in Section 5.50.360 must be met prior to the first day the premises are open for business. The Community Planning & Services Manager, the Director of Planning & Development Services and the Fire Inspector shall report the results of their investigation to the City Clerk not later than 21 days from the date the application is received by the City Clerk.
- D. Upon receipt of the reports from the Chief of Police, the Community Planning & Services Manager, the Director of Planning & Development Services and the Fire Inspector, or whenever 21 days have elapsed after the filing of the application, whichever occurs first, the City Clerk shall grant or deny the license consistent with the notification requirements established by law, provided the license shall be issued or denied within 45 days from the date of filing of a completed application with the clerk's office. Any applicant aggrieved by denial of a license may seek judicial review in accordance with subsection E.
- E. Any person aggrieved by denial, suspension or revocation of a license application may seek judicial review pursuant to K.S.A. 60-2101(d), and amendments thereto.

(History: Ord. MP-2790 §6, 2008)

### **5.50.360 Inspection Necessary.**

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No business shall be conducted on a licensed premises unless an inspection by the Community Planning & Services Manager or his 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 capable of being locked. These provisions are not applicable to an in-office massage business.
- B. Toilet facilities shall be provided in convenient locations. When five or more massage establishment employees and patrons of different sexes are on the premises at the same time, separate toilet facilities shall be provided. Urinals may be substituted for water closets after one water closet has been provided. Toilets shall be designated as to the sex accommodated therein. These provisions are not applicable to an in-office massage business.
- C. Lavatories or wash basins provided with both hot and cold running 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 business.

The Community Planning & Services Manager 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 concerning the maintenance of premises, nor to preclude authorized inspection thereof.

(History: Ord. MP-2790 §7, 2008)

### **5.50.370 Issuance of Massage Establishment License.**

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

- A. 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.
- B. The operation, as proposed by the applicant, if permitted, would not comply with all applicable laws including, but not limited to, the City's zoning, and health regulations.
- C. The applicant, if an individual; or any of the stockholders holding 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, including 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 felony in the 20 years immediately preceding the date of the application;
  - 2. an offense involving sexual misconduct with children;
  - 3. obscenity;
  - 4. promoting prostitution as defined by K.S.A. 21-3513;
  - 5. solicitation of a lewd or unlawful act;
  - 6. prostitution;
  - 7. pandering or other sexually related offense; or
  - 8. Any violation of this Chapter during the last five years.
- D. 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.
- E. The applicant has had a massage establishment or other similar permit or license denied, revoked, or 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 five years prior to the date of the application.
- F. The applicant has previously been issued a license for an adult entertainment business (as defined in this Code) 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, including 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.
- 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 Chapter.

The records of the City Clerk shall show the action taken on the application. The license shall state that it is not transferable or refundable. 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 denial. Any applicant aggrieved by the disapproval may seek judicial review as set forth in Section 5.50.350E.

Any license issued under the provisions of this Chapter shall at all times be displayed by the licensee in an open and conspicuous place on the premises where the licensed business is conducted.

(History: Ord. MP-2790 §8, 2008)

### **5.50.380 Business Identification Cards.**

All license applicants or managers issued a license pursuant to the provisions of this Chapter shall, at all times when working in an establishment have in their possession a valid identification card issued by the City. Such identification cards shall be laminated to prevent alteration. Licensees or managers shall produce their identification cards for inspection upon request of any person who by law may inspect same.

(History: Ord. MP-2790 §9, 2008)

### **5.50.390 Inspections, Immediate Right of Entry.**

The Police Department and Community Planning & Services may from time to time make an inspection of each licensed establishment in this City, to include those locations where an in-office massage business conducts its business, for the purposes of determining that the provisions of this Chapter are complied with. Such inspections shall be made at reasonable times and in a reasonable manner. It shall be unlawful for any licensee 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 or employee to grant immediate access to such inspector shall be grounds for the revocation or suspension of any business or employee license.

(History: Ord. MP-2790 §10, 2008)

### **5.50.400 Operation Regulations.**

The operation of any message establishment or in-office massage business 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 may be extended on premises having bona fide evening and night shifts.
- B. **Danger to safety or health.** No service shall be given which is clearly dangerous or harmful in the opinion of the Deputy City Manager or Community Planning & Services Manager, to the safety or health of any person, and after such notice in writing has been delivered to the licensee from such director.
- C. **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 Chapter or during in-office massage. 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. As used in this Section, "that portion" shall mean physical, visual and audible separation by permanently installed walls and doors between the area where massage therapy occurs and the area where alcoholic beverages or cereal malt beverages are sold or consumed. Any currently-licensed establishments are exempt from the physical, visual and audible separation requirements as long as they remain validly licensed.
- D. **Conduct of premises.** All licensees licensed under the provisions of this Chapter 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 Chapter. 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.

- E. Every portion of a licensed establishment, including appliances, and personnel shall be kept clean and operated in a sanitary condition.
- F. All employees shall be clean and wear clean outer garments. On all premises except in-office massage, 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.
- G. 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.
- H. 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.
- I. 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.
- J. Wet and dry heat rooms, shower compartments, and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs shall be thoroughly cleaned after each use.
- K. Table showers are strictly prohibited.

(History: Ord. MP-2890 §1, 2010; MP-2790 §11, 2008)

#### **5.50.410 Supervision.**

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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 Chapter. The violation of any such provision by any agent or employee of the licensee shall constitute a violation by the licensee.

(History: Ord. MP-2790 §12, 2008)

#### **5.50.420 Persons Under Age 18 Prohibited Services.**

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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 has authorized such therapy in writing.

(History: Ord. MP-2790 §13, 2008)

#### **5.50.430 Employee and Patron Registers.**

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- A. All operators licensed under the provisions of this Chapter shall keep and maintain on their premises a current register of all their employees showing 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 City police department.
- B. Every person who engages in or conducts a licensed establishment shall keep a daily register of all patrons, with first and last names, addresses, hours of arrival and departure, the rooms or cubicles assigned, and the first and last name of the employee who performed the massage. Said daily register shall at all times during business hours be subject to inspection by City health officials and by the police department and shall be kept on file for one year.

(History: Ord. MP-2790 §14, 2008)

#### **5.50.440 Advertising.**

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No person, firm, partnership, association or corporation, including but not limited to an establishment granted a license under provisions of this Chapter shall place, publish, or distribute or cause to be placed, published, or distributed any advertising that reasonably suggests to prospective patrons that any service is available other than those services as described in Section 5.50.300E, or that employees or massage therapists are dressed in any manner other than described in Section 5.50.400, nor shall any establishment indicate in the text of such advertising that any service is available other than those services described in Section 5.50.300E.

(History: Ord. MP-2790 §15, 2008)

#### **5.50.450 Applicability to Existing Businesses.**

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The operators of any existing massage establishment or in-office massage business are required to comply with all provisions of this Chapter, subject to the educational and experience requirements set forth in Section 5.50.500.

(History: Ord. MP-2790 §16, 2008)

#### **5.50.460 Exceptions.**

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The provisions of this Chapter 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, persons working under the direction and supervision of any licensed healing arts practitioner or in any such establishment, or 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.

(History: Ord. MP-2790 §17, 2008)

#### **5.50.470 Further Regulations.**

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

(History: Ord. MP-2790 §18, 2008)

#### **5.50.480 Restriction of Business to Premises.**

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- A. All massage therapy (not to include in-office massage) provided for under this Chapter shall be conducted on the premises of a licensed massage establishment.
- B. Subject to subsection C, all licensed massage establishments shall be operated from a commercial business premise. Sole practitioners (therapists who work alone), are required to have both a massage therapist license and massage establishment license and to work from a commercial business premise.
- C. Licensed massage therapists may perform their services on behalf of clients in clients' homes or residences or other designated places, or in the therapist's home or residence provided that the therapist's home is licensed as a massage establishment and provided that any place where massage therapy is performed is subject to the inspection as set out in Sections 5.50.360 and 5.50.390, operated in accordance with the regulations set out in Section 5.50.400, and if conducted in a therapist's home or residence, subject to the home occupation requirements in Title 18.

(History: Ord. MP-2790 §19, 2008)

#### **5.50.490 Revocation or Suspension of Massage Establishment License.**

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- A. Any license issued for a massage establishment or an in-office massage business may be revoked or suspended by the Municipal Judge, sitting as an administrative hearing officer, after notice and a hearing where the Municipal Judge finds that any of the provisions of this Chapter are or were violated, or the



provisions for issuance of any license are or were violated, or where the licensee or any employee of the licensee, including a massage therapist, has been convicted of or diverted on any offense found in Sections 5.50.370 and 5.50.520 herein and the licensee has actual or constructive knowledge of the violation or conviction, or in any case where the licensee refused to permit any duly authorized police officer or employee of the City to inspect the premises or the operations of the licensee. Convictions or diversions for any offense found in Sections 5.50.370 and 5.50.520 shall result in revocation unless the Municipal Judge determines by clear and convincing evidence that such licensee or employee of the licensee will not pose a threat to the public in such person's capacity as a licensee or employee thereof and that such person has been sufficiently rehabilitated to warrant the public trust.

- B. Before revoking or suspending any license, the Municipal Judge shall give the licensee at least ten days' written notice of the specific charges against the licensee and the opportunity for a public hearing before the Municipal Judge, at which time the licensee may present evidence bearing upon the question. A licensee aggrieved by the decision of the Municipal Judge may seek judicial review as set forth in Section 5.50.350E.

(History: Ord. MP-2950 §1, 2012; MP-2790 §20, 2008)

### **5.50.500 Massage Therapist License Required, Examination Requirements, Restrictions.**

No person shall perform massage therapy or in-office massage within the City, unless he or she has a valid massage therapist license issued by the City pursuant to the provisions of this Chapter, provided massage therapy may be performed by a student massage therapist subject to the provisions of Section 5.50.550.

- A. To be eligible for issuance of a Massage Therapist license, an applicant must: 1. Submit an application on a form provided by the City Clerk, and; 2. Submit acceptable proof that the applicant has successfully passed the 1992 or later National Certification Examination for Therapeutic Massage and Bodywork (NCBTMB), or the 2007 or later Massage & Bodywork Licensing Examination (MBLE<sup>x</sup>). The applicant must also have successfully completed a course of instruction, consisting of not less than 500 hours, in the theory, method or practice of massage. The required curriculum must include the subjects of anatomy, physiology, kinesiology, pathology, first aid and hygiene and practical instruction in massage technique. Proof of completion of educational and training requirements must be by certified transcripts. The educational and training requirements required by this Chapter may be received from more than one school. Training hours from a school that has had its NCBTMB Assigned School Code denied, suspended or revoked will not be accepted. The applicant must also have successfully completed an in-person certification program in American Red Cross first aid and American Heart Association CPR, or equivalent programs, and provide current certification, and; 3. Pay the applicable license fee(s).
- B. All licensed massage therapists applying for a renewal license must show proof that they have received a minimum of twelve hours (fifty minutes per hour) of professional massage continuing education during the preceding twelve-month licensing period. One hour continuing education credit will be awarded for each hour attendance at programs relating 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 Police Department. The certificate for any on-line continuing education courses must clearly depict the time required to acquire such certificate. All licensed massage therapists applying for renewal license must show proof of current in-person certification in American Red Cross first aid and American Heart Association CPR, or equivalent programs in addition to the twelve hours of continuing education. Continuing education hours are required for all license renewals after issuance of the initial license.
- C. Individuals licensed with the City as massage therapists as of the effective date of this ordinance may renew that license notwithstanding failure to satisfy the minimum education and testing provisions in Section 5.50.500A, and continue to renew such license so long as there are no lapses in active licensure

status. If active licensure status lapses, the person will be required to apply for a new massage therapist license and meet the qualifications in Section 5.50.500A, and continuing education hours meeting the requirements set forth in Section 5.50.500B.

(History: Ord. MP-3033 §1, 2014; MP-2890 §2, 2010; MP-2790 §21, 2008)

### **5.50.510 Application for Massage Therapist License; Fees.**

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- A. Any person who desires to perform or provide massage or in-office massage or to perform any massage services in a massage establishment, as defined herein, shall file a written application with the City Clerk and pay an annual filing fee to the City Clerk of \$75 for a new application, or \$50 for a renewal application, neither of which shall be refundable. No privilege to provide massage therapy shall exist until an application for renewal has been approved. After a license has expired, a "new" application under the current education and testing standards is required. A massage therapist license shall be valid for a period of 12 months from the date of issuance. This application fee shall cover the cost of processing 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 Chapter. Identification cards as provided in Section 5.50.530 are required for each massage establishment in which the therapist works. The fee for each identification card subsequent to the initial one is \$15.
- B. The application for a massage therapist license shall contain the following:
1. Name, address, and telephone number.
  2. Two passport photographs at least two inches by two inches.
  3. Applicant's weight, height, color of hair and eyes, and fingerprints, provided once an applicant has submitted fingerprints, they shall not be required to submit new fingerprints for any renewal application for that person.
  4. Written evidence that the applicant is at least 18 years old.
  5. Business, occupation, or employment of the applicant for the three years immediately preceding the date of application.
  6. Whether such person has ever been convicted of any crime except minor traffic violations. If any person mentioned in this subsection has been so convicted, a statement must be made giving the place and court in which the conviction was obtained and the sentence imposed as a result of such conviction.
  7. The position or function the applicant is being hired to perform within such establishment. (If applicable).
  8. 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.
  9. Proof of the education requirements set forth at Section 5.50.500 herein.
  10. Verification of employment by signature of the manager of the licensed massage establishment.

(History: Ord. MP-2790 §22, 2008)

### **5.50.520 Application Processing and Issuance of Massage Therapist License.**

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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 felony within the 20 years immediately preceding the date of the application;
  2. an offense involving sexual misconduct with children;
  3. obscenity;
  4. promoting prostitution as defined by K.S.A. 21-3513;
  5. solicitation of a lewd or unlawful act;
  6. prostitution;
  7. pandering or other sexually related offense; or
  8. any violation of this Chapter in the last year, or any revocation of their therapist license within the last year.
- 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. 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.
- D. That the applicant has not successfully completed the examination or education standards required under the provisions of this Chapter.
- E. That the applicant is not legally present in the United States.
- F. Any applicant aggrieved by denial of a license may seek judicial review in accordance with Section [5.50.350E](#).

(History: Ord. MP-2890 §3, 2010; MP-2790 §23, 2008)

### **5.50.530 Identification Cards.**

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- A. Upon issuance of a massage therapist license, the City Clerk shall issue the massage therapist an identification card bearing the massage therapist's license number, physical description, and a photograph. Such identification cards shall be laminated to prevent alteration.
- B. All massage therapists issued a license pursuant to the provisions of this Chapter shall have their City-issued identification card in their possession at all times when working in an establishment, and shall produce such identification for inspection upon request of any person who by law may inspect same.
- C. Licensees shall, when conducting in-office massage, conspicuously display their City-issued identification card on their clothing.

(History: Ord. MP-2790 §24, 2008)

### **5.50.540 Revocation or Suspension of Massage Therapist License.**

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- A. The Municipal Judge, sitting as an administrative hearing officer, may, after notice and a hearing, revoke or suspend a massage therapist license where it appears that the therapist has been convicted of or diverted on any offense enumerated in Section [5.50.520A](#) or for violation of any of the provisions of this ordinance to include the application standards. Convictions or diversions for any offense found in Section [5.50.520](#) shall result in revocation unless the Municipal Judge determines by clear and convincing evidence that such licensee will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust.
- B. Before revoking or suspending any massage therapist license, the Municipal Judge shall give the massage therapist at least ten days' written notice of the hearing and specify the alleged violation of this code warranting suspension or revocation.



- C. Any massage therapist aggrieved by a revocation or suspension of their license may seek judicial review as set forth in Section [5.50.350E](#).

(History: Ord. MP-2950 §2, 2012; MP-2790 §25, 2008)

### **5.50.550 Student Massage Therapy.**

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An individual actively enrolled in and currently attending classes in a course of instruction, consisting of not less than 300 hours, in the theory, method or practice of [massage](#), may conduct [massage](#) therapy as a practicum component of the training program under the supervision of the [massage](#) school instructor, provided the following conditions are met:

- A. All advertisements for [massage](#) therapy that will be performed by a student will clearly inform the customer that the [massage](#) therapy will be performed by a student under the supervision of the [massage](#) school instructor.
- B. Prior to conducting any [massage](#) therapy, the student [massage](#) therapist will require the customer sign and acknowledge he/she has been informed the [massage](#) therapy will be conducted by a student under the supervision of the massage school instructor. These acknowledgment documents will be maintained by the school for a period of one year and will be produced at the request of any law enforcement officer or City official.

(History: Ord. MP-2790 §26, 2008)

### **5.50.560 Transfer of Licenses; Other Licenses and Fees.**

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- A. No [massage](#) establishment or [in-office massage](#) business, or [massage](#) therapist licenses are transferable and such authority as a license confers shall be conferred only on the licensee named therein.
- B. Any applications made, fees paid, and licenses obtained under the provisions of this Chapter 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.

(History: Ord. MP-2790 §27, 2008)

### **5.50.570 Penalty.**

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Any person, firm, partnership, association or corporation convicted of violating any of the provisions of this Chapter shall be deemed guilty of a public offense and subject to the general penalty provisions of Section [1.12.010](#).

(History: Ord. MP-2790 §28, 2008)

### **5.50.580 Severability.**

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If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this Chapter or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Chapter or any part thereof.

(History: Ord. MP-2790 §29, 2008)

## Business Licenses Taxes and Regulations

### 05.40.000

### Massage Establishments

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#### Chapter 5.40

#### MASSAGE ESTABLISHMENTS

#### Sections:

- 5.40.010 Definitions.☐
- 5.40.020 License--Required.☐
- 5.40.030 Massage Business--License--Application--Fees.☐
- 5.40.040 Massage Business License--Issuance.☐
- 5.40.050 Massage Business License--Suspension or revocation.☐
- 5.40.060 Massage Therapist License--Required.☐
- 5.40.070 Massage Therapist License--Application--Fees.☐
- 5.40.080 Massage Therapist License--Issuance.☐
- 5.40.090 Massage Therapist License--Revocation.☐
- 5.40.100 License--Transfer--Other licenses and fees.☐
- 5.40.120 Facilities necessary.☐
- 5.40.130 Inspections--Immediate right of entry.☐
- 5.40.140 Massage Therapist.☐
- 5.40.145 Student Massage Therapy.☐
- 5.40.150 Identification cards.☐
- 5.40.160 Massage Establishment - Regulations.☐
- 5.40.162 Off-Premises Massage - Regulations.☐
- 5.40.165 Limitations on In-Office Massage.☐
- 5.40.180 Massage Establishment Supervision.☐
- 5.40.190 Massage Therapist and patron registers.☐
- 5.40.220 Exceptions.☐
- 5.40.230 Violation--Penalty.☐

(Ord. 2826, 2006)

## Business Licenses Taxes and Regulations

### 05.40.010

#### Definitions.

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5.40.010 Definitions. Words and terms used in this chapter shall have meanings as follow unless the context otherwise requires:

A. "Business Premises" Means those premises where a private or public commercial enterprise is conducted, but specifically not to include businesses conducted in a private residence or premises used for joint residential and business purposes.

B. "In-Office Massage" means any Massage Therapy performed on the business premises of a massage patron and is restricted to Massage Therapy applied only above the patron's waist.

C. "Massage Business" means any Massage Establishment or Off-Premises Massage Business.

D. "Massage Establishment" means any establishment having a place of business located in the City where any person, firm, partnership, association, or corporation engages in or carries on or licenses to be engaged in or carried on any of the activities mentioned in subsection F of this section for compensation.

E. "Massage Therapist" means any person whom, for any consideration whatsoever, engages in the practice of massage as defined in this chapter.

F. "Massage Therapy" means any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, reflexology, 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, liniment, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice.

G. "Off-Premises Massage" means any Massage Therapy performed at a patron's private residence in the City and specifically does not include the guest rooms of hotels.

H. "Off-Premises Massage Business" means any business, not located in the City, where any person, firm, partnership, association, or corporation engages in or carries on or licenses to be engaged in or carried on any of the activities mentioned in B. or G. of this section for compensation.

I. "Patron" means any person over eighteen years of age who utilizes or receives the services of any establishment subject to the provisions of this chapter and under such circumstances that it is reasonably expected that he or she will pay money or give any other consideration therefor, 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 has authorized such therapy in writing.

J. "Recognized School" means any school or institution of learning which has for its purpose the teaching of the theory, method, profession, or work of Massage Therapy, which school requires a resident course of study consistent with all the requirements put forth by the National Certification Examination for Therapeutic Massage and

Bodywork before the student shall be furnished with a diploma or certificate of graduation from such school or institution of learning following the successful completion of such course of study or learning. (Ord. 2530, 2000, Ord. 2826, 2006)

## **Business Licenses Taxes and Regulations**

### **05.40.020**

#### **License--Required.**

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5.40.020 License--Required. No person, firm, partnership, association or corporation shall perform Massage Therapy or operate a Massage Business, as defined in this chapter, without first having obtained a license from this City. Such license shall be valid only from January 1st to December 31st of each calendar year. (Ord. 2530, 2000, Ord. 2826, 2006)

## **Business Licenses Taxes and Regulations**

### **05.40.030**

#### **Massage Business--License--Application--Fees.**

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5.40.030 Massage Business -- License--Application--Fees. A. Every new applicant for a license to maintain or operate any Massage Business shall file an application with the City Clerk and pay an initial filing fee to the City Clerk of three hundred dollars which shall not be refundable or prorated.

B. The application for a license to operate any Massage Business shall set forth the exact nature of the services to be provided, and facilities, and name, address, and telephone number of each applicant, including stockholders holding more than ten percent of the stock of the corporation, any partner, when a partnership is involved, and any manager.

C. The applicant for a Massage Business must identify the proposed place of business, and the location where the applicant can be contacted.

D. In addition to the foregoing, any applicant for a license shall furnish the following information:

1. Written proof that the applicant is at least eighteen years old;
2. Fingerprints;
3. Business, occupation, or employment of the applicant for the three years immediately preceding the date of application;
4. The Massage Therapy business license history of the applicant; whether such person, in previously operating in this or another City or State under license, has had such license revoked or suspended, the place and the reasons, and the business activity or occupation subsequent to such action of suspension or revocation;
5. Any criminal convictions, except minor traffic violations, fully disclosing the jurisdiction in which convicted and the offense for which convicted and the circumstances;
6. 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 qualifications of the applicants for the license. (Ord. 2530, 2000, Ord. 2826, 2006)

## **Business Licenses Taxes and Regulations**

### **05.40.040**

#### **Massage Business License--Issuance.**

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5.40.040 Massage Business License -- Issuance. A. After the filing of an application in the proper form, the Governing Body shall examine the application, and after such examination, shall issue a license for a Massage Business unless the Governing Body finds that:

1. The correct fee has not been tendered to the City, and, in the case of a check or bank draft, honored with payment upon presentation;
  2. For a Massage Establishment, the operation, as proposed by the applicant, if licensed, would not comply with all applicable laws, including, but not limited to, the City's building, zoning and health regulations. A Massage Establishment as an accessory use may be licensed in the Planned Office Commercial, Professional Office, Commercial Neighborhood, TownSquare, and Planned Industrial zoning districts. This section does not apply to an Off-Premises Massage Business.
  3. The applicant, if an individual; or any of the stockholders holding more than ten percent of the stock of the corporation, any of the officers and directors, if the applicant is a corporation; or any of the partners, including limited partners, if the applicant is a partnership; and the manager or other person principally in charge of the operation of the business, have been convicted of any crime that includes:
    - a. A felony;
    - b. Any offense involving sexual misconduct with children;
    - c. Any offense under K.S.A. 21-3436 and amendments thereto that is defined as an inherently dangerous felony;
    - d. Any sex offense that falls under article K.S.A Chapter 21, Article 35 and amendments; and
    - e. Any offense under K.S.A. 59-29a02 and any amendments thereto that is identified as an act undertaken by a sexually violent predator.
  4. 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 with;
  5. The applicant has had a Massage Business license, as defined in this chapter, or other similar permit or license denied, revoked, or suspended for any of the above causes by the City or any other state or local agency within five years prior to the date of the application;
  6. The applicant, if an individual, or any of the officers and directors, if the applicant is a corporation; or any of the partners, including limited partners, if the applicant is a partnership; and the manager or other person principally in charge of the operation of the business, is not over the age of eighteen years;
  7. The manager or other person principally in charge of the operation of the business would be ineligible to receive a license under the provisions of this chapter.
- B. Any license issued under the provisions of this chapter to the applicant of a Massage Establishment, shall at all times be displayed by the licensee in an open

and conspicuous place on the premises where the licensed business is conducted.  
C. Any license issued under the provisions of this chapter to the applicant of an Off-Premises Massage Business, shall be openly displayed at all times while Massage Therapy services are being rendered to the patron. (Ord. 2704 A2 2004 ; 2560 A2 2001 , Ord. 2530, 2000 , Ord. 2826, 2006 )



## **Business Licenses Taxes and Regulations**

### **05.40.050**

#### **Massage Business License--Suspension or revocation.**

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5.40.050 Massage Business License--Suspension or revocation. Rules and regulations pertaining to revocation and suspension of Massage Business licenses shall be as follows:

A. Any license issued for a Massage Business may be revoked or suspended by the Governing Body after a public hearing before the Governing Body where it is found that any of the provisions of this chapter are violated or where the licensee or any employee of the licensee, including a Massage Therapist, has been convicted of any offense found in Sections 5.40.040, Subsection A, 3 and the licensee has actual or constructive knowledge of the violation or conviction or in any case, where the licensee refuses to permit any duly authorized Police Officer or the Codes Administration Division of the City to inspect the premises or the operations therein.

B. The Governing Body, before revoking or suspending any license, shall give the licensee at least ten days' written notice of the charges against him and the opportunity for a public hearing before the Governing Body, at which time the licensee may present evidence bearing upon the question. In such cases, the charges shall be specific and in writing. (Ord. 2530, 2000, Ord. 2826, 2006)

## **Business Licenses Taxes and Regulations**

### **05.40.060**

#### **Massage Therapist License--Required.**

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5.40.060 Massage Therapist License--Required. A. No person shall be employed as a Massage Therapist or Student Massage Therapist subject to the provisions of this chapter unless he or she has a valid license issued by the City pursuant to the provisions of this chapter.

B. A Massage Therapist or Student Massage Therapist must be employed by a Massage Business licensed in the City. A licensed Massage Therapist must immediately notify the City Clerk in writing, within 30 days, of any change in information concerning the licensee's original application. (Ord. 2530, 2000, Ord. 2826, 2006)

## **Business Licenses Taxes and Regulations**

### **05.40.070**

#### **Massage Therapist License--Application--Fees.**

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5.40.070 Massage Therapist License--Application--Fees. A. Any person employed to perform any services in a Massage Business, as defined in this chapter, shall file a written application with the City Clerk and pay an annual filing fee to the City Clerk of twenty-five dollars which shall not be refundable or prorated.

B. The application for a Massage Therapist license shall contain the following:

1. Name, address and telephone number;
2. Applicant's weight, height, color of hair and eyes, and fingerprints;
3. Written evidence that the applicant is at least eighteen years old;
4. Business, occupation, or employment of the applicant for the three years immediately preceding the date of application;
5. Whether such person has ever been convicted of any crime except minor traffic violations; if any person mentioned in this subdivision has been so convicted, a statement must be made giving the place and court in which the conviction was obtained and the sentence imposed as a result of such conviction;
6. The position or function the applicant is being hired to perform within such Massage Business;
7. The licensed Massage Business where the therapist will be employed;
8. 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 qualifications of the applicant for the license. (Ord. 2530, 2000, Ord. 2826, 2006)

## **Business Licenses Taxes and Regulations**

### **05.40.080**

#### **Massage Therapist License--Issuance.**

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5.40.080 Massage Therapist License--Issuance. The City Clerk shall issue a Massage Therapist license within twenty-one days following application unless he/she finds that:

A. The applicant for the Massage Therapist license has been convicted of:

1. A felony;
2. An offense involving sexual misconduct with children;
3. Any offense under K.S.A. 21-3436 and amendments thereto that is defined as an inherently dangerous felony;
4. Any sex offense that falls under K.S.A. Chapter 21, Article 35 and amendments thereto; and
5. Any offense under K.S.A. 59-29a02 and any amendments thereto that is identified as an act undertaken by a sexually violent predator.

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. 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;

D. In the case of a Massage Therapist that the applicant has not successfully completed a resident course of study or learning from a recognized school under the provisions of this chapter. (Ord. 2530, 2000, Ord. 2826, 2006 )

## **Business Licenses Taxes and Regulations**

### **05.40.090**

#### **Massage Therapist License--Revocation.**

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5.40.090 Massage Therapist License--Revocation. Massage Therapist licenses may be revoked as follows:

A. A Massage Therapist license issued by the City Clerk shall be revoked or suspended after a public hearing before the City Clerk, or his/her designated representative, where it appears that the Massage Therapist has been convicted of any offense enumerated in Section 5.40.080.

B. The City Clerk, before revoking or suspending any Massage Therapist license, shall give the licensee at least ten days' written notice of the examination into his conviction record and the opportunity for a public hearing before the City Clerk or his/her designated representative, at which hearing the relevant facts regarding the occurrence of the conviction shall be determined.

(Ord. 2530, 2000, Ord. 2826, 2006)

## **Business Licenses Taxes and Regulations**

### **05.40.100**

#### **License--Transfer--Other licenses and fees.**

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5.40.100 License--Transfer--Other licenses and fees. Rules and regulations pertaining to the transfer of licenses, other licenses and fees shall be as follows:

A. No Massage Business or Massage Therapist licenses are transferable, separate or divisible, and such authority as a license confers shall be conferred only on the licensee named therein.

B. Any applications made, fees paid and licenses obtained under the provisions of this chapter shall be in addition to and not in lieu of any other fees, licenses, or licenses required to be paid or obtained under any other ordinances of this City. (Ord. 2530, 2000, Ord. 2826, 2006).

## Business Licenses Taxes and Regulations

### 05.40.120

#### Facilities necessary.

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5.40.120 Facilities necessary. A. No license to conduct a Massage Establishment shall be issued unless an inspection by the Chief Codes Administrator or his/her authorized representative reveals that the establishment complies with each of the following minimum requirements:

1. 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 a cubicle, room, booth, or any area within any licensed establishment which is fitted with a door capable of being locked.
2. Toilet facilities shall be provided in convenient locations. When five or more Massage Therapists and patrons of different genders are on the premises at the same time, separate toilet facilities shall be provided. A single water closet per gender shall be provided for each twenty or more employees or patrons of that gender on the premises at any one time. Urinals may be substituted for water closets after one water closet has been provided. Toilets shall be designated as to the gender accommodated therein.
3. Lavatories or washbasins provided with both hot and cold running water shall be installed in either the toilet room or a vestibule. Lavatories or washbasins shall be provided with soap in a dispenser and with sanitary towels.

B. The Chief Codes Administrator shall certify that the proposed Massage Establishment complies with all of the requirements of this chapter and shall give or send such certification to the City Clerk; provided, that nothing contained in this section shall be construed to eliminate other requirements of statute or ordinance concerning the maintenance of premises, nor to preclude authorized inspection thereof. (Ord. 2530, 2000, Ord. 2826, 2006)

## **Business Licenses Taxes and Regulations**

### **05.40.130**

#### **Inspections--Immediate right of entry.**

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5.40.130 Inspections--Immediate right of entry. A. The Police Department and Codes Administration division may from time to time make an inspection of each licensed Massage Establishment in this City for the purpose of determining that the provisions of this chapter are complied with.

B. Such inspections shall be made at reasonable times and in a reasonable manner.

C. It is unlawful for any licensee to fail to allow such inspection officer immediate access to the premises or to hinder such officer in any manner; provided, that any failure on the part of any licensee or employee to grant immediate access to such inspector shall be grounds for the revocation or suspension of any business or Massage Therapist license. (Ord. 2530, 2000, Ord. 2826, 2006)



## **Business Licenses Taxes and Regulations**

### **05.40.140**

#### **Massage Therapist.**

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5.40.140 Massage Therapist. A. Any person, including an applicant for a Massage Business license, who engages or intends to engage in the practice of Massage Therapy as defined in this chapter, shall upon making application for a license, supply the name and address of the recognized school attended, the date attended, and a copy of the diploma or certificate of graduation showing that the applicant has successfully completed a minimum of five hundred (500) hours of instruction in Massage Therapy. In lieu of the required five hundred hours, proof that the applicant has passed the National Certification Examination for Therapeutic Massage and Bodywork will be accepted as proof of fulfillment of this requirement of completion of a course of instruction.

B. Every applicant for a license or a renewal of any said business wishing to practice Massage Therapy described in this chapter must have successfully completed certification in American Red Cross first aid and American Heart Association CPR or equivalent. (Ord. 2620, 2002Ord. 2530, 2000, Ord. 2826, 2006)

## **Business Licenses Taxes and Regulations**

### **05.40.145**

#### **Student Massage Therapy.**

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5.40.145 Student Massage Therapy. Any person actively enrolled in and currently attending classes in a course of instruction, consisting of no fewer than 300 hours, in the theory, method or practice of massage, may conduct Massage Therapy as a practicum component of the training program, provided the following conditions are met:

- A. The student must first obtain a Student Massage Therapist license from the City. Upon making application for a license, the student must supply the name and address of the recognized school attended, dates attended and anticipated graduation date, and an official transcript showing that the applicant has successfully completed a minimum of three hundred (300) hours of instruction in the theory, method or practice of massage.
- B. The Massage Therapy is conducted under the supervision of a Massage Therapist licensed by the City of Shawnee. For the purposes of this section, supervision shall mean the supervising therapist is available on the premises and is personally aware the student is performing Massage Therapy on a client. In addition, the supervising therapist must personally observe the student's massage techniques at least once during the Massage Therapy session. For Off-Premises Massage, a licensed Massage Therapist must be present and on the premises at all times when a Student Massage Therapist is performing Massage Therapy.
- C. All advertisements for Massage Therapy that will be performed by a student will clearly inform the customer that a student under the supervision of a licensed Massage Therapist will perform the Massage Therapy.
- D. Prior to conducting any Massage Therapy, the Student Massage Therapist will require the customer to sign and acknowledge he/she has been informed the Massage Therapy will be conducted by a student under the supervision of a licensed Massage Therapist. These acknowledgement documents will be maintained by the supervising Massage Therapist for a period of one year and will be produced at the request of any law enforcement officer or City official.
- E. Concurrent with these special restrictions, the student must comply with all parts of Chapter 5.40 regarding the behavior, activities and restrictions of Massage Therapy employees. (Ord. 2576, 2001, Ord. 2826, 2006)

## **Business Licenses Taxes and Regulations**

### **05.40.150**

#### **Identification cards.**

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5.40.150 Identification cards. A. All or any employees issued a license by the City Clerk under the provisions of this chapter shall, at all times when providing Massage Therapy subject to the provisions of this chapter, have in the possession a valid identification card issued by the City bearing the Massage Therapist's license number, the Massage Therapist's physical description, and a photograph of such person.

B. Such identification cards shall be laminated to prevent alteration; provided, that all persons granted licenses under this chapter shall at all times keep their licenses available for inspection upon request of any person who by law may inspect the same. (Ord. 2530, 2000, Ord. 2826, 2006)

## **Business Licenses Taxes and Regulations**

### **05.40.160**

#### **Massage Establishment - Regulations.**

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5.40.160 Massage Establishment - Regulations. A. The operation of any Massage Establishment shall be subject to the following regulations:

1. Hours. Such business shall be closed and operations shall cease between the hours of twelve midnight and six a.m. each day.
2. Danger to Safety and Health. No service shall be given which is clearly dangerous or harmful in the opinion of the Director of the County Department of Health to the safety or health of any person, and after such notice in writing to the licensee from such director;
3. Alcoholic Beverages. No alcoholic beverages or cereal malt beverages, nor the consumption thereof, shall be allowed or permitted, to be done in or upon any premises licensed under the provisions of this chapter. 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;
4. Conduct of Premises. All businesses licensed under the provisions of this chapter shall at all times be responsible for the conduct of business on their licensed premises and for any act or conduct of any Massage Therapist which constitutes a violation of the provisions of this chapter; 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 may be grounds for suspension or revocation of the Massage Therapist or Massage Business License;
5. Every portion of a licensed establishment, including appliances, and personnel shall be kept clean and operated in a sanitary condition;
6. All employees shall be clean and wear clean outer garments which use is restricted to the licensed establishment; provisions for a separate dressing room for each gender 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;
7. All employees and Massage Therapists must be modestly attired; diaphanous, flimsy, transparent, form fitting, or tight clothing is prohibited; clothing must cover the employees', Massage Therapists' chests at all times; hemlines of skirts, dresses, or other such attire may be no higher than the top of the knee;
8. The private parts of patrons must be covered by towels, cloths, or undergarments when in the presence of a Massage Therapist; any contact with a patron's genital area is strictly prohibited;
9. All licensed establishments, when applicable, shall be provided with clean, laundered sheets and towels in sufficient quantity and shall be laundered after each use thereof and stored in approved, sanitary manner;
10. Wet and dry heat rooms, shower compartments, and toilet rooms shall be thoroughly cleaned each day the business is in operation; bathtubs shall be thoroughly cleaned after each use.

B. The City Clerk may, after a public hearing make and enforce reasonable rules and regulations not in conflict with, but to carry out, the intent of this chapter.  
(Ord. 2530, 2000, Ord. 2826, 2006)

## Business Licenses Taxes and Regulations

### 05.40.162

#### **Off-Premises Massage - Regulations.**

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5.40.162 Off-Premises Massage - Regulations. A. The operation of any Off-Premise Massage Business shall be subject to the following regulations:

1. Hours. Massage Therapy performed at a patron's residence is limited to the hours between 6:00 am and 10:00 pm.

2. Danger to Safety and Health. No service shall be given which is clearly dangerous or harmful in the opinion of the Director of the County Department of Health to the safety or health of any person, after such notice in writing to the licensee from such director;

3. Conduct of Premises. All businesses licensed under the provisions of this chapter shall at all times be responsible for the conduct of any Massage Therapist and any act which constitutes a violation of the provisions of this chapter; any violation of the City, state, or federal laws committed by any such licensee or Massage Therapist affecting the eligibility or suitability of such person to hold a license may be grounds for suspension or revocation of the Massage Therapist License or Massage Business License;

4. All Massage Therapists shall be clean and wear clean outer garments which use is restricted to the licensed Massage Business.

5. All Massage Therapists must be modestly attired; diaphanous, flimsy, transparent, form fitting, or tight clothing is prohibited; clothing must cover the Massage Therapists' chests at all times; hemlines of skirts, dresses, or other such attire may be no higher than the top of the knee;

6. The private parts of patrons must be covered by towels, cloths, or undergarments when in the presence of a Massage Therapist; any contact with a patron's genital area is strictly prohibited;

7. All licensed establishments, when applicable, shall be provided with clean, laundered sheets and towels in sufficient quantity and shall be laundered after each use thereof and stored in approved, sanitary manner;

B. The City Clerk may, after a public hearing make and enforce reasonable rules and regulations not in conflict with, but to carry out, the intent of this chapter. (Ord. 2826, 2006)

## **Business Licenses Taxes and Regulations**

### **05.40.165**

#### **Limitations on In-Office Massage**

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5.40.165 Limitations on In-Office Massage. The authority granted a licensee for In-Office massage is limited to the authority to conduct Massage Therapy on the business premises of the licensee's patrons. In-Office Massage Therapy is limited to the area above the patron's waist. (Ord. 2826, 2006)

## **Business Licenses Taxes and Regulations**

### **05.40.180**

#### **Massage Establishment - Supervision.**

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5.40.180 Massage Establishment - Supervision. A licensee shall have the premises supervised at all times when open for business. The licensee shall personally supervise the business, and shall not violate or permit others to violate, any applicable provisions of this chapter. The violation of any such provisions by any agent or employee of the licensee shall constitute a violation by the licensee. (Ord. 2530, 2000, Ord. 2826, 2006)



## **Business Licenses Taxes and Regulations**

### **05.40.190**

#### **Massage Therapist and patron registers.**

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5.40.190 Massage Therapist and patron registers. Current and daily registers shall be kept of Massage Therapist and patrons as follows:

A. Under the provisions of this chapter, all licensees shall keep and maintain on their premises a current register of all Massage Therapists names, addresses and license numbers. Such register shall be open to inspection at all reasonable times by any employee of the Codes Administration Division or by any members of the City Police Department.

B. Every person who engages in or conducts a licensed Massage Business shall keep a daily register, and hours of arrival and, if applicable, the rooms or cubicles assigned or for services performed in a patron's home, the name of the patron and the address of the location where such services are performed. The daily register shall be subject to inspection by the Codes Administration Division or by any member of the Police Department and shall be kept on file for one year. (Ord. 2530, 2000, Ord. 2826, 2006)

## **Business Licenses Taxes and Regulations**

### **05.40.220**

#### **Exceptions.**

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5.40.220 Exceptions. The provisions of this chapter shall not apply to the following:

A. Medical doctors, chiropractors, osteopaths, physical therapists, nurses, barbers, and cosmetologists as to massage of the scalp, who are licensed to practice their respective professions in Kansas or who are licensed to practice temporarily under the auspices of an associate or establishment duly licensed in Kansas, while in the course of their licensed business or profession. Further, those Massage Therapists working under the direct control of a licensed physician or chiropractor are exempt from the provisions of this chapter.

B. Services provided in a hospital, nursing home, or sanitarium. (Ord. 2560, 2001, Ord. 2826, 2006)

## **Business Licenses Taxes and Regulations**

### **05.40.230**

#### **Violation--Penalty.**

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5.40.230 Violation--Penalty. A violation of any provision of this chapter shall constitute a Class C offense. (Ord. 2530, 2000, Ord. 2826, 2006)

## Sec. 3.55.010. - Definitions.

Unless otherwise expressly stated or the context clearly indicates a different intention, the following terms shall, for the purposes of this chapter, have the meaning indicated in this section:

- (1) "Accredited institution" means a post-secondary institution that is accredited by one of the regional agencies of the higher learning commission or an institution recognized by the Kansas Board of Regents to provide vocational, technical or post-secondary education in the state.
- (2) "Chief of Police" means the chief of police of the city or a designated representative.
- (3) "City" means the City of Wichita, Kansas.
- (4) "Clean" means the absence of soil, dirt, and debris.
- (5) "Client" means any person who receives any service of a massage therapy business.
- (6) "Council" means the Wichita City Council.
- (7) "Crimes involving moral turpitude" includes charges of sale of sexual relations, prostitution, buying sexual relations, patronizing a prostitute, human trafficking, promoting prostitution, aggravated human trafficking, sodomy, soliciting for immoral purposes, public nudity, lewd and lascivious behavior, sexual battery, loitering for the purposes of solicitation, indecent liberties with a child, incest, adultery, bigamy, promoting obscenity, promoting obscenity to minors, displaying material harmful to minors, any crime set forth in Article 55 of Chapter 21 of the Kansas Statutes Annotated, possession, sale or distribution of any illegal drug or controlled substance or any other offenses similar to those listed herein that are contrary to the laws of any city, state or of the United States.
- (8) "Disinfect" means to use an EPA-registered product effective against methicillin resistant staphylococcus aureus (MRSA) and vancomycin resistant enterococcus faecalis or faecium (VRE) according to manufacturer's instructions.
- (9) "Employee" means any and all persons employed in any capacity by the operator of a massage therapy business, including independent contractors, who work in, at, or render any services to the patrons of a massage therapy business or who render any service directly related to the operation of a massage therapy business.
- (10) "EPA" means the United States Environmental Protection Agency.
- (11) "Health officer" means the director of public works of the city or a designated representative.
- (12) "Laundered" means using either regular commercial laundering or a noncommercial laundering process in which the towels, robes, bandages, pads or other articles are washed on a hot water setting with detergent and at least one cup of bleach or an antibacterial agent used in accordance with product label instructions in a clothes washer and dried on a high heat setting in a dryer; or a noncommercial laundering process in which the towels, robes, linens, or other articles are immersed in water with a temperature of at least one hundred forty degrees Fahrenheit for at least fifteen minutes during the washing or rinsing operation.
- (13) "License" means the license issued by the city to operate a massage therapy business.

- (14) "Massage therapist" means any person who administers massage therapy, except as exempted in section 3.55.020.
- (15) "Massage therapist school" means an approved massage therapy education program that meets the criteria established in this chapter, and any amendments thereto, and is both authorized in the jurisdiction in which it is located and that reflects a curriculum acceptable to an accrediting body recognized by the United States Department of Education. Education received outside of the United States must be substantially equivalent to the criteria of this chapter and must be recognized by the jurisdiction in which it is located.
- (16) "Massage therapy" or "massage" means care and services provided in a system of therapeutic, structured touch, palpation or movement of the skin, muscle, tendons, fascia and the lymphatic system of another person's body in order to enhance or restore the general health and well-being of the recipient. Such a system includes, but is not limited to techniques such as effleurage, commonly called stroking or gliding; petrissage, commonly called kneading; tapotement or percussion; friction, vibration, compression; stretching within the normal anatomical range of movement; hydrotherapy; or such techniques which may be applied with or without the aid of lubricants, salt or herbal preparations, water, hot and cold application or a massage device that mimics or enhances the actions possible by human hands.
- Massage therapy shall not include diagnosis or treatment or use of procedures for which a license to practice medicine or surgery, chiropractic, or podiatry is required, and does not include the laying on of hands performed within the context of religious or spiritual beliefs.
- (17) "Massage therapy business" means any business offering or providing massage therapy for consideration except as exempted in section 3.55.020; and whether at a fixed place of business or at a location designated by the customer or client through outcall massage services. The term "massage therapy business" includes a massage therapist who is the sole owner, operator and employee of a massage therapy business operating as a sole proprietorship.
- (18) "Offer" includes any form of communication, by any medium.
- (19) "Official transcript" means a document certified by a school on a form approved and prescribed by the United States Department of Education or other regulating authority, indicating the hours and types of coursework, examinations and scores that were completed by the student.
- (20) "Operator" means the person to whom a massage therapy business license is issued.
- (21) "Outcall massage" means the engaging in or carrying on of massage therapy for compensation in a location other than the business operations address set forth in the massage establishment's massage therapy business license.
- (22) "Permit" means the permit issued by the city to a massage therapist.
- (23) "Person" means any individual, corporation, partnership, association, firm, joint venture, company or other state franchised business entity such as a professional association, limited liability company, limited liability partnership or other organization of any kind.

- (24) "Sole proprietorship" means and includes any legal form of business organization where the business owner (sometimes referred to as the "sole proprietor") is the only person employed by that business to provide massage services.

(Ord. No. 50-248 § 1, 4-26-16)

Sec. 3.55.020. - Exceptions.

The provisions of this chapter shall not apply to the following:

- (1) Persons holding an unrevoked license or certificate to practice any of the healing arts under the laws of the state; persons licensed under the laws of this state to practice any of the following: podiatry, as a physical therapist, as a professional nurse or as a practical nurse while such persons are engaged in their licensed practice; and all persons working under the supervision and control of such licensed persons while engaged in their licensed practice;
- (2) Any medical care facility as defined and licensed under the laws of this state applicable to such medical care facility or persons employed thereby, while engaged in their usual duties for such medical care facility;
- (3) Any adult care home as defined and licensed under the laws of this state applicable to such adult care home or persons employed thereby, while engaged in their usual duties for such adult care home;
- (4) Any person engaged in barbering or in the practice of cosmetology or apprentice while carrying out their particular profession or business and holding a valid, unrevoked license or certificate of registration issued under the laws of this state applicable to such barbering or cosmetology practice;
- (5) Employees of schools supported primarily by taxation, of schools exempt from payment of property taxes, and of "proprietary schools," approved by the Kansas Board of Regents while engaged in their usual duties for the school;
- (6) Any person providing massage therapy to a person related to them by blood or marriage when there is no charge for such massage therapy;
- (7) Massage therapy students enrolled in a proprietary school approved by the Kansas Board of Regents while under the direct supervision of a licensed massage therapist; or
- (8) A trainer of any duly constituted athletic team while in the normal course of his or her duties.

(Ord. No. 50-248 § 2, 4-26-16)

Sec. 3.55.030. - License required.

It is unlawful for any person to operate a massage therapy business without a valid license as required by this chapter.

(Ord. No. 50-248 § 3, 4-26-16)

Sec. 3.55.040. - Application for license.

- (a) Any person desiring to obtain a license to operate a massage therapy business shall make written application to the city treasurer's office.
- (b) The application shall be verified and accompanied by the license fee.
- (c) All applicants shall provide the following information under oath:
  - (1) The full true name and any other aliases used by the applicant;
  - (2) If the applicant is an individual, the name, date of birth, race, sex, address, telephone number and email address of the proposed licensee;
  - (3) The name, address and telephone number of the business and type of business organization (individual, partnership, corporation or limited liability company). If the business is a partnership, corporation or limited liability company, the same information required of an individual applicant in subsections (2), (8), (9) and (10) is required of all partners, officers, directors, managers, members or persons owning more than five percent of the common or preferred stock of the business;
  - (4) The proposed address and name or names of the premises upon which the massage therapy business for which a license is sought will be located and any name under which the applicant plans to conduct business ("dba" name);
  - (5) The hours that the massage therapy business service will be open to the public, including such times that the door or doors providing entry to the massage therapy business may be locked as allowed in subsection 3.55.170(e) and amendments thereto;
  - (6) The name of the owner of the premises upon which the message therapy business is to be located;
  - (7) A certificate of good standing from Kansas, or other state of incorporation or registration, if the applicant is a corporation, partnership or limited liability company;
  - (8) A statement that the applicant or any partner, officer, director, manager, member or person owning more than five percent of the common or preferred stock of the business has not within five years preceding the date of application been convicted of, or on diversion or deferred judgment for any felony or any crime of moral turpitude as defined in subsection 3.55.010(7);
  - (9) A statement that the applicant or any partner, officer, director, manager, member or person owning more than five percent of the common or preferred stock of the business is currently under indictment, charge or information for any felony or any crime of moral turpitude as defined in subsection 3.55.010(7);
  - (10) A statement as to whether the applicant or any partner, officer, director, manager, member or person owning more than five percent of the common or preferred stock of the business is a registered sex offender;
  - (11)

Information as to whether such individual or business has ever been refused any similar license or permit, or has had any similar license or permit issued to such individual or business in the city or elsewhere revoked or suspended, and the reason thereof; and

- (12) A statement by the applicant that he or she is familiar with the provisions of this chapter and is complying and will comply with them.

(Ord. No. 50-248 § 4, 4-26-16)

Sec. 3.55.050. - Standards for issuance of license.

- (a) To receive a license to operate a massage therapy business, all applicants must meet the following standards:
- (1) The required fees must be paid;
  - (2) The application must be complete and provide all information required by section 3.55.040;
  - (3) The applicant must not have knowingly made a false or misleading statement of a material fact in the application;
  - (4) The applicant must be at least eighteen years of age;
  - (5) The applicant must not, within five years immediately preceding the date of the filing of the application, have been convicted in any jurisdiction of a felony or crime involving moral turpitude as defined in this chapter. For the purposes of this section the term "conviction" shall include being placed on diversion, entering into a deferred judgment program, or being adjudged guilty upon entering a plea of no contest;
  - (6) The applicant must not be currently under indictment, charge or information for any felony or any crime of moral turpitude as defined in subsection 3.55.010(7);
  - (7) The applicant must not be a registered sex offender with any federal, state or local government;
  - (8) The applicant must not have had a similar type of license in any jurisdiction previously suspended or revoked for good cause within five years immediately preceding the date of the filing of the application; and
  - (9) The operation of the business as proposed, if permitted, must comply with all applicable building, fire, health and zoning laws, including compliance with Article IV.E of the Wichita/Sedgwick County unified zoning code when located in a residence. Additionally, any business operating out of a residence shall obtain a home occupation license as required by chapter 3.96 of this Code.
- (b) If the applicant is a partnership, corporation, limited liability company or other type of organization where two or more persons have a financial interest the following standards must be met:
- (1) All persons having financial interest in the partnership, corporation or other type of organization shall be at least eighteen years of age. Financial interest in a corporation includes any officer or director of the corporation and any stockholder holding more than five percent of the stock of a corporation;
  - (2)



No person having a financial interest in the partnership, corporation, limited liability company or any other type of organization shall, in any jurisdiction, have been convicted of, pled no contest to, or participated in a diversion or deferred judgment program, after having been charged with a felony or any crime involving moral turpitude as defined in section 3.55.010(7) within the immediate five years preceding the date of the application;

- (3) No person having a financial interest in the partnership, corporation, limited liability company or any other type of organization shall be currently under indictment, charge or information for any felony or any crime of moral turpitude as defined in subsection 3.55.010(7); and
- (4) No person having a financial interest in the partnership, corporation, limited liability company or any other type of organization shall be a registered sex offender with any federal, state or local government.

(Ord. No. 50-248 § 5, 4-26-16)

Sec. 3.55.060. - Permit required, exception.

It is unlawful for any individual person to practice massage therapy without a valid massage therapist permit as required by this chapter. Provided, however, permits are not required for students enrolled in a massage therapy program at an accredited institution during the time such student is completing a clinical requirement for graduation and is practicing massage therapy while under the direct supervision of a massage therapist who holds a valid permit under this chapter. Direct supervision requires the presence of the massage therapist holding a permit under this chapter to be on the same premises as the student providing massage therapy services.

(Ord. No. 50-248 § 6, 4-26-16)

Sec. 3.55.070. - Application for permit.

- (a) Any person desiring to secure a permit to practice massage therapy shall make written application to the city treasurer on a form provided for that purpose. The application shall be accompanied by the required licensee fee and shall provide the following information:
  - (1) The applicant's full name, address, date of birth, any other used aliases, gender, present and previous employment for the past five years and current phone number and current email address, if available;
  - (2) The applicant's city, state and country of residence for the five years immediately preceding the date of the application;
  - (3) A statement that the applicant is a citizen or lawful resident of the United States and is not less than eighteen years of age;
  - (4)

A statement that the applicant has not been convicted of a felony or any crime involving moral turpitude as defined in section 3.55.010(7) within five years immediately preceding the date of the application. For the purposes of this section the term "conviction" shall include being placed on diversion, entering into a deferred judgment program, or being adjudged guilty upon entering a plea of no contest;

- (5) A statement that the applicant is not currently under indictment, charge or information for any felony or any crime of moral turpitude as defined in subsection 3.55.010(7);
- (6) A statement that the applicant is not a registered sex offender with any federal, state or local government;
- (7) Proof of any education, training and experience the applicant may have had qualifying applicant to administer the service of a massage therapist as required by section 3.55.080(5) or, if applicable, section 3.55.085(2) of this code;
- (8) Information as to any prior permit or license allowing the practice of massage therapy issued to the applicant within the past five years. Specifically, the applicant shall provide information as to the type of license, the issuing agency or jurisdiction, the address and phone number of the issuing agency or jurisdiction, the time period covered by the prior license and whether any such license issued to applicant in any jurisdiction was ever revoked or suspended and the reason or reasons for such revocation or suspension; and
- (9) Information as to whether applicant has ever been refused or denied any permit or license allowing the practice of massage therapy within the past five years and the specific date of such refusal or denial, the jurisdiction where such refusal or denial occurred, the address and phone number of the agency denying or refusing such license or permit and reason for such refusal or denial.

(Ord. No. 50-248 § 7, 4-26-16)

#### Sec. 3.55.080. - Standards for issuance of permit.

To receive a permit to provide services as a massage therapist an applicant must meet the following standards:

- (1) The applicant must be at least eighteen years of age and a lawful citizen or resident of the United States.
- (2) The applicant must not have been convicted or released from imprisonment after conviction of a felony or any crime involving moral turpitude within five years immediately preceding the date of application. For the purposes of this section the term "conviction" shall include being placed on diversion, entering into a deferred judgment program, or being adjudged guilty upon entering a plea of no contest.
- (3) The applicant must not be currently under indictment, charge or information for any felony or any crime of moral turpitude as defined in subsection 3.55.010(7);

- (4) The applicant must not be a registered sex offender with any federal, state or local government.
- (5) The applicant must provide one of the following:
  - (a) Proof the applicant has sat for and passed the Massage and Bodywork Licensure exam (MBLEx); or
  - (b) Proof the applicant has sat for and passed the National Certificate of Therapeutic Massage and Bodywork exam (NCTMB) prior to February 1, 2015; or
  - (c) An official transcript showing the applicant has successfully completed a minimum of five hundred instructor taught classroom hours within a recognized massage therapist school; or
  - (d) Proof of one hundred fifty hours of education from an accredited institution, at least twelve hours of continuing education units in the last five years, and membership in a nationally recognized massage therapy association.
- (6) The applicant must not have had a similar type of permit or license suspended or revoked in any jurisdiction within five years immediately preceding the date of the filing of the application.

(Ord. No. 50-248 § 8, 4-26-16)

Sec. 3.55.085. - Licensing of existing massage practitioners.

For a period of one year after the effective date of this chapter, an applicant may obtain a renewable permit to provide services as a massage therapist by meeting the following standards:

- (1) The applicant must meet the requirements contained in subsection (1), (2), (3), (4) and (6) of section 3.55.080, and amendments thereto; and
- (2) The applicant meets one of the following requirements:
  - (a) The applicant has completed a minimum of five hundred hours of instruction relating to massage therapy at a massage school or comparable legal authority in another state verified by affidavit; or
  - (b) The applicant has completed at least three hundred hours of training in massage therapy during the past three years; or
  - (c) The applicant has practiced for at least ten hours per week for five years verified by affidavit and at least one additional form of documentation including, but not limited to tax returns, gross tax receipts, business advertising literature or monthly client receipts; or
  - (d) The applicant has successfully passed a nationally recognized certification examination provided by the National Certification Board for Therapeutic Massage and Bodywork.

(Ord. No. 50-248 § 9, 4-26-16)

Sec. 3.55.090. - Fees.

- (a) For every massage therapy business there shall be a two-year license fee of \$200.00. This fee shall accompany all initial and renewal license applications and no license shall be issued until the fee is paid in full.
- (b) For every massage therapist permit there shall be a two-year permit fee of \$75.00. This fee shall accompany all initial and renewal applications for a permit and no permit shall be issued until the fee is paid in full.
- (c) There shall be a fee of \$5.00 for replacement of the identification card required in section 3.55.110.
- (d) All fees set forth in this section are non-refundable and no fees shall be pro-rated.

(Ord. No. 50-248 § 10, 4-26-16)

Sec. 19-382. - Standards for issuance of permit for an entertainer, employee, masseur, or masseuse.

To receive a permit as an entertainer, employee, masseur, or masseuse an applicant must meet the following standards:

- (1) The applicant shall be at least 18 years of age.
- (2) The applicant must not have had a permit or license as required by this article or similar ordinances or statutes revoked by any city, county, or state within the preceding two years.
- (3) No permit shall be issued if:
  - a. The applicant for the permit has been convicted of or pleaded nolo contendere to a specified criminal act or has entered into a diversion program for any offense defined as a specified criminal act within five years immediately preceding the date of the application if such specified criminal act constitutes a felony or within two years immediately preceding the application if such specified criminal act constitutes a misdemeanor or municipal ordinance violation.
  - b. The applicant has knowingly made any false, misleading, or fraudulent statement in the permit application or in any document required by the unified government in conjunction therewith.
  - c. That the correct permit fee has not been tendered to the unified government and, in the case of a check or bank draft, not honored with payment upon presentation.
  - d. The applicant does not meet the requirements set out herein.
  - e. The applicant has:
    1. Had a permit issued pursuant to this article for entertainer, employee, masseur, or masseuse revoked within two years of the current application;
    2. Been convicted of an offense within two years immediately preceding this application which, if committed in this city or county would constitute a violation of this article;
    3. An active warrant filed against such person from any federal, state, or municipal law enforcement agency for a specified criminal act.
  - f. In addition to the above, if the application is for a masseur or masseuse permit, the applicant must provide the following:
    1. Proof that the applicant has successfully completed a resident course of study or learning from a recognized school as required under the provisions of this article or an affidavit as set out in section 19-381(b)(13).
    2. Proof that the applicant has successfully completed the examination to determine the applicant's skill and knowledge of all forms and methods of baths, hydrotherapy, body manipulations, and physiotherapy. Such examination shall be administered by the county administrator or his designated representative.
    3. The applicant must submit to a physical examination by a licensed physician, at the applicant's expense, and supply proof from such examining physician that the applicant is free from contagious or communicable disease. Further, the permittee shall submit to a

physical examination, at his expense, every six months by a license physician, and every permittee shall provide written proof from such licensed physician that the permittee is free from any and all contagious or communicable diseases.

(Ord. No. O-01-07(Res. No. R-01-07), § 1(2.5-8), 1-4-2007)

Sec. 19-383. - License and permits for adult businesses and employees, etc.

- (a) *Application for license.* The applicant for a license as provided for in this article must apply in writing on forms provided by the license division.
- (b) *Application for permit.* The applicant for a permit as provided for in this article must apply in writing on forms provided by the city police department, when the applicant intends to work in an establishment located within the city, and on forms provided by the county sheriff's department, when the applicant intends to work in an establishment located outside the city.
- (c) *Fees.* A nonrefundable license fee of \$500.00 shall be submitted with the application for a license to operate an adult business. A nonrefundable permit fee of \$100.00 shall be submitted with the application for a permit to be an entertainer, employee, masseuse, or masseur in an adult entertainment business. Applicants for replacement of a lost or stolen license or permit shall pay a fee in the amount established by the county administrator.

(Ord. No. O-01-07(Res. No. R-01-07), § 1(2.5-9), 1-4-2007)

Sec. 19-384. - Display of license, permit, or identification card.

- (a) The business license shall be displayed in a conspicuous public place in the adult entertainment business.
- (b) The permit or identification card shall be displayed by an entertainer, employee, masseuse, or masseur so required to have such permit, upon request of a customer, law enforcement officer or any other unified government official designated by the county administrator.

(Ord. No. O-01-07(Res. No. R-01-07), § 1(2.5-10), 1-4-2007)

Sec. 19-385. - Renewal of license or permit.

- (a) Every permit or license issued pursuant to this article will terminate at the expiration of one year from the date of issuance, unless sooner revoked, and every permit or license will terminate and must be renewed before operation is allowed in the following year. The application for renewal must be filed not later than 30 days before expiration. The procedure, application, fees, and requirements for a renewal shall be the same as for the original license or permit. In addition, a late charge of \$100.00 for a license and \$50.00 for a permit will be assessed if the application is filed less than 30 days prior to expiration of the current license or permit.

(b)

If the police department or sheriff's department is aware of any information bearing upon the applicant's qualifications to receive a renewal of the business license, that information pertaining to a business license shall be filed in writing with the unified government board of commissioners not later than ten days after the date of the application for renewal. The report filed by the police department or sheriff's department shall be maintained as a confidential record and shall not be disclosed to any person except a member of the unified government board of commissioners, the applicant, and such other persons as are authorized by law to receive such information.

- (c) Whenever any application for renewal of a license or permit has been filed prior to the expiration date of the license or permit, and the application has not been acted upon as of the expiration date of the license or permit, a temporary license or permit shall be issued which shall remain in effect until a final determination has been made. Any applicant aggrieved by the denial of an application for renewal of a license or permit may seek judicial review of such denial in accordance with the provisions of section 19-394.

(Ord. No. O-01-07(Res. No. R-01-07), § 1(2.5-11), 1-4-2007)

#### Sec. 19-386. - Revocation of license or permit.

- (a) The unified government board of commissioners shall revoke a business license and the city police department, in the case of a person working in an establishment located in the city, or the county sheriff's department, in the case of a person working in an establishment located outside the city, shall revoke a permit for an employee, entertainer, masseur, or masseuse for any of the following reasons:
- (1) False or misleading information or data was given on any application or material facts were omitted from any application.
  - (2) The licensee or permittee violates any provision of this article or any rule or regulation adopted by the unified government board of commissioners pursuant to this article, provided, however, that in the case of a first offense by a licensee where the conduct was solely that of a person not the licensee, the penalty shall not exceed a suspension of 30 days if the unified government board of commissioners shall find that the licensee had no actual or constructive knowledge of such violation and could not be the exercise of due diligence have had such actual or constructive knowledge.
  - (3) The licensee or permittee becomes ineligible to obtain a license or permit.
  - (4) Any cost or fee required to be paid by this article is not paid.
  - (5) A licensee employs an entertainer, employee, masseur, or masseuse who does not have a permit or provides space on the premises, whether by lease or otherwise, to an independent contractor who performs as an entertainer, employee, masseur, or masseuse without a permit.
  - (6) Any intoxicating liquor or cereal malt beverage is possessed, served, or consumed on the premises of an adult entertainment business.
  - (7)

The licensee, permittee, or anyone acting on behalf of or under the licensee or permittee has refused to allow immediate entry and inspection of the licensed premises open to the public during normal business hours or other reasonable time to any person authorized by this article.

- (8) The licensed premises have become a public nuisance or currently does not comply with the fire, health, and safety codes of the city in which it is located or, in the case of unincorporated areas, of the unified government.
- (b) The unified government board of commissioners, before revoking or suspending any business license, or the police department or sheriff's department, before revoking or suspending any permit, shall give the licensee notice of the grounds for revocation or suspension and an opportunity for a public hearing. Any such hearing shall be conducted in accordance with the provisions of section 19-393.
- (c) The attempted transfer, sale, or assignment of a license or permit or any interest in a permit or license or use of a license or permit by other than the person to whom such license or permit was issued shall automatically and immediately revoke the license or permit.
- (d) The attempted transfer, sale, or assignment of a license or permit or any interest in a license or permit shall be reported in writing by the licensee to the unified government board of commissioners through the license division within 24 hours after such attempted transfer, sale, or assignment.
- (e) Any person whose license or permit is revoked shall not be eligible to receive a license or permit for two years from the date of revocation, provided, however, that when a masseur or masseuse permit has been revoked solely because the person has a contagious or communicable disease or has failed to submit to a physical examination and supply proof from such examining physician as required by section 19-382(a)(4)f, the permit may be renewed when a certificate is obtained from a licensed medical practitioner or the department of health certifying that the applicant has been treated and/or passed the institutional or quarantine period required by K.A.R. 28-1-6 and amendments thereto and the regulations, if any, of the county health department and is free from such diseases or, if found to have a contagious or communicable disease which might pose a direct threat to the health or safety of patrons or others in the work place, submit a written statement of the accommodations to be taken to eliminate the direct threat.

(Ord. No. O-01-07(Res. No. R-01-07), § 1(2.5-12), 1-4-2007)

#### Sec. 19-387. - Hours of operation.

- (a) Hours of operation of all adult businesses shall be only between the hours of 10:00 a.m. and 10:00 p.m. and as set out in the special use permit.
- (b) All areas of an adult business open to the public shall be open to inspection during normal business hours by law enforcement officers, the county administrator, or such other persons as the county administrator may designate for the purpose of determining that the provisions of this article are complied with. It shall be unlawful for any person to fail to allow such inspection officer immediate access to the premises or to hinder such officer in any manner. Any failure on the part of any permittee



or licensee to grant immediate access to such inspection shall be grounds for the revocation or suspension of any business license or employee permit. The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary place of habitation.

- (c) All business or activity provided for under this article shall be conducted and performed on the licensed premises.

(Ord. No. O-01-07(Res. No. R-01-07), § 1(2.5-13), 1-4-2007)

#### Sec. 19-388. - Responsibilities of the operator.

- (a) The operator shall maintain a register of all employees, entertainers, masseuses, and masseurs showing the name, including aliases used, home address, birth date, sex, height, weight, color of hair and eyes, date of employment and termination, job duties of the party and such other information as may be required by the terms of the special use permit or the police department or sheriff's department. The above information shall be maintained in the register on the premises for a period of two years following termination.
- (b) The operator shall make the register of employees, entertainers, masseuses, and masseurs available immediately upon demand of law enforcement officers, the county administrator, or other person designated by the county administrator during hours of operation.
- (c) Every act or omission of an employee constituting a violation of the provisions of this article shall be deemed the act or omission of the operator, if such act or omission occurs either with the authority, knowledge, or approval of the operator, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.
- (d) An operator shall be responsible for the conduct of all persons on the licensed premises and any act or omission of any person constituting a violation of the provisions of this article shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended, or renewed if the operator has knowledge of the violation and fails to take action to cause such person to discontinue the unlawful conduct.
- (e) The premises of all adult businesses shall be physically arranged in such a manner that the entire interior portion of any booths, cubicles, rooms, or stalls wherein entertainment is provided is visible from a common area of the premises. Visibility shall not be blocked or obscured by doors, curtains, drapes, or any other obstruction whatsoever.
- (f) The premises of all adult businesses will be so constructed as to include an anteroom, foyer, partition, or other physical barrier on all customer entrances that will insure observation of the interior of the premises is not observable from the exterior of the building. In addition, all windows will be covered to prevent viewing of the interior of the building from the outside and all doorways not constructed with an anteroom or foyer will be covered so as to prevent observation of the interior of the premises from the exterior of the building.

- (g) The operator shall be responsible for and shall provide that any room or area used for the purpose of adult shall be readily accessible at all times and shall be opened to view in its entirety for inspection by the county administrator, a person designated by the county administrator, or law enforcement officers at all reasonable times.
- (h) No operator, entertainer, employee, masseur, or masseuse of an adult business shall demand or collect all or any portion of a fee for entertainment before its completion.
- (i) A sign shall be conspicuously displayed in the common area of the premises of an adult business and shall read as follows:

"THIS ADULT BUSINESS IS REGULATED BY THE UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS, ORDINANCE/RESOLUTION NO. \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ .

- (1) Engaging in any type of unlawful sexual conduct is not permitted.
  - (2) Exposing sex organs is not permitted;
  - (3) Demanding or collecting all or any portion of a fee for entertainment before completion is not permitted."
- (j) The operation of any bathhouse or massage establishment shall be subject to the following regulations:
- (1) *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.
  - (2) *Danger to safety, health.* No service shall be given which is clearly dangerous or harmful to the safety or health of any person in the opinion of the county health department and after such notice is given in writing to the licensee.
  - (3) *Cleanliness of establishment.* Every portion of a licensed establishment, including appliances and personnel, shall be kept clean and operated in a sanitary condition.
  - (4) *Personnel cleanliness, clothing, dressing rooms.* All employees, entertainers, masseurs, and masseuses shall be clean and wear clean outer garments, which use is restricted to the licensed establishment. 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.
  - (5) *Personnel clothing.* All employees, entertainers, masseurs, and masseuses must be modestly attired. Diaphanous, flimsy, or transparent clothing is prohibited. Clothing must not be skintight and must cover the employees', entertainers' masseurs', or masseuses' chests and torso at all times and extend below the genitals, pubic region, and buttocks.
  - (6) *Coverage of patrons, prohibition of genital contact.* The private parts of patrons must be covered by towels, cloths, or undergarments when in the presence of an employee, entertainer, masseur, or masseuse. Any contact with a patron's genital area, either directly or indirectly, is strictly prohibited.
  - (7)

*Sheets and towels cleanliness.* All licenses establishments, when applicable, shall be provided with clean, laundered sheets and towels in sufficient quantity and shall be laundered after each use thereof and stored in approved, sanitary manner.

- (8) *Cleanliness of heat rooms, showers, toilets, baths.* Wet and dry heat rooms, shower compartments, and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs shall be thoroughly cleaned after each use.
- (k) A licensee of an adult business shall have the premises supervised by a manager at all times when open for business. An adult manager shall be on duty at an adult business at all times when the premises are open for business. The name of the manager on duty shall be prominently posted during working hours. Any business rendering massage services shall have one person who qualifies as a masseur or masseuse on the premises at all times while the establishment is open. The manager designated or appointed by its licensee shall personally supervise the business and shall not violate, or permit others to violate, any applicable provision of this article.
- (l) No establishment granted a license under provisions of this article shall place, publish, distribute, or cause to be placed, published, or distributed any advertising matter that depicts any specified anatomical area that would reasonably suggest to prospective patrons that any service is available other than those services as described herein or that employees, entertainers, masseurs, or masseuses are dressed in any manner described herein, nor shall any establishment indicate in the text of such advertising that any service is available other than those services described herein.

(Ord. No. O-01-07(Res. No. R-01-07), § 1(2.5-14), 1-4-2007)

Sec. 19-389. - Prohibitions and unlawful acts for adult businesses.

- (a) It shall be unlawful for any licensee, operator or permittee to knowingly permit any person to engage in a specified criminal act on the premises.
- (b) It shall be unlawful for any licensee, operator, or permittee of such businesses to encourage or permit any person upon the licensed premises to touch, caress, or fondle the breasts, buttocks, anus, vulva, or genitals of any other person either directly or through clothing.
- (c) It shall be unlawful for any licensee, operator, permittee, or patron of an adult business to be unclothed or in such attire, costume, or clothing so as to expose to view any specified anatomical areas.
- (d) It shall be unlawful for any licensee, operator, or permittee of any such business to permit or allow to remain on the premises any person who exposes to view any specified anatomical areas.
- (e) It shall be unlawful for any licensee, operator, or permittee of such a business to permit a masseur or masseuse, or anyone acting in that capacity, known to be infected with a communicable or contagious disease to continue to work or remain in, on, or about the premises.
- (f) It shall be unlawful for any licensee, operator, permittee, employee, patron, or any other person to possess or consume or to allow or to cause to be possessed or consumed any alcoholic liquor or cereal malt beverages on any premises licensed pursuant to this article.

- (g) It shall be unlawful for any licensee, operator, or permittee of any business licensed pursuant to this article to allow on the premises any employee, as defined herein, under the age of 18 years.
- (h) It shall be unlawful for any licensee, operator, or permittee of any business licensed pursuant to this article to allow any person under the age of 18 years on the licensed premises during hours of operation.
- (i) It shall be unlawful for any person:
  - (1) To furnish, loan, or give to another person a birth certificate, driver's license, affidavit, or any other written document for the purpose of misrepresenting or falsifying the other person's age to allow access to an adult business.
  - (2) To misrepresent or falsify such person's age or the age of any other person for the purpose of gaining access to and adult business.
  - (3) Under the age of 18 to enter, attempt to enter, or remain on or about the premises of any adult business.
- (j) It shall be unlawful for any licensee, operator, or permittee of any such business to refuse to allow immediate entry and inspection of those portions of the licensed premises open to the public by authorized law enforcement personnel. The inspections shall be made during normal business hours or other reasonable time by any person authorized pursuant to this article.
- (k) It shall be unlawful for any person to give false information either in writing or orally for the purpose of obtaining any license to operate a business pursuant to this article or for the purpose of obtaining any permit to perform any service in any such licensed business.
- (l) Any violation of the local, state, or federal laws committed on the premises by a permittee or licensee affecting the eligibility or suitability of such person or entity to hold a license or permit may be grounds for suspension or revocation of a license or permit.

(Ord. No. O-01-07(Res. No. R-01-07), § 1(2.5-15), 1-4-2007)

Chapter 20 - MASSAGE THERAPY<sup>[1]</sup>*Footnotes:*

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*Cross reference— Health and sanitation, ch. 17; licenses, permits and miscellaneous business regulations, ch. 19; adult entertainment, § 19-356 et seq.*

## Sec. 20-1. - Territorial applicability; definitions.

- (a) The provisions of this chapter apply only in the city.
- (b) 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:

*Business premises* means 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.

*Healing arts practitioner* means as defined by the provisions of K.S.A. 65-2801 et seq.

*In-office massage therapy* means 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.

*In-office massage therapy establishment* means any establishment having a place of business where any person, firm, partnership, association, or corporation engages in the activities mentioned in the definition of "in-office massage therapy" in this section for compensation.

*Massage* means any method which may include, but not specifically limited to stroking, kneading, tapping, compression, vibration, rocking, friction, pressure, and those techniques based upon manipulation or the application of pressure to the muscular structure or soft tissues of the human body, which may also include nonforceful passive or active movement and/or the application of techniques intended to affect the energetic systems of the body. These activities shall be conducted for therapeutic purposes such as promoting circulation of the blood and lymph, relaxation of muscles, relief from pain, restoration of metabolic balance and other benefits, both physical and mental. The use of oils, lotions, powders, or other lubricants may also be included. The term "massage," as defined herein, does not include the touching in any fashion of human genitalia.

*Massage establishment* means any establishment where any person, firm, partnership, association or corporation engages in or carries on or permits to be engaged in or carried any of the activities mentioned in the definition of "massage" for compensation, but does not include in-office massage therapy establishments, nor does it include any businesses licensed under section 19-356 et seq.

*Massage therapist* means any person who, for any consideration whatsoever, engages in the practice of massage as herein defined.

*Patron* means any person over 18 years of age who utilizes or receives the services of any establishment subject to the provisions of this chapter and under such circumstances that it is reasonably expected that he will pay money or give any other consideration therefor, 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 the parent or legal guardian has authorized such therapy in writing.

(Code 1988, § 20-1; Ord. No. O-92-98, § 1, 10-22-1998)

**Cross reference—** Definitions generally, § 1-2.

#### Sec. 20-2. - License required.

No person, firm, partnership, association or corporation shall operate a massage establishment, as defined herein, without first having obtained a license therefore issued by the unified government. 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 12 months from the date of issuance; provided that individuals conducting in-office massage therapy shall be required to hold only one permit; and provided further that any individuals conducting massage 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 establishment conducted on permanent premises.

(Code 1988, § 20-2; Ord. No. O-92-98, § 1, 10-22-1998)

#### Sec. 20-3. - 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 nonpermanent office premises of the licensee's clients and it specifically does not include the authority to conduct massage therapy at a permanent premises operated by the licensee; provided that the licensee must have a permanent business office located within the city. If the licensee desires to conduct massage therapy both on the nonpermanent office premises of the licensee's clients and on a permanent premises operated by licensee, the applicant must obtain a separate license for in-office massage therapy and a massage establishment license by submitting separate applications for each, provided only one license fee shall be charged for both applications.

(Code 1988, § 20-3; Ord. No. O-92-98, § 1, 10-22-1998)

#### Sec. 20-4. - Massage therapist license required; categories; educational requirements; restrictions.

No person shall perform massage therapy within the jurisdiction of the unified government unless he has a valid massage therapist permit issued by the unified government pursuant to the provisions of this chapter; provided, however, that massage therapy may be performed by a student massage therapist subject to the provisions of section 20-24.

- (1) The categories of massage therapist permits and educational requirements shall be as follows:
  - a. *Massage Therapist I.* To be eligible for issuance of a Massage Therapist I permit, an applicant must provide proof of the following:
    1. That the applicant has successfully completed a course of instruction consisting of not less than 300 hours in the theory, method or practice of massage. An hour of instruction is defined as 50 minutes of actual instructional time. The curriculum shall include, at a minimum:
      - (i) Seventy-eight hours of anatomy, physiology, and kinesiology, including palpation, range of motion, and physics of joint function.
      - (ii) Thirty hours of pathology, including indications and contraindications to massage therapy and palpation.
      - (iii) One hundred fifty hours of theory and practice of massage technique, to include deep tissue techniques, remedial gymnastics, body mechanics of the practitioner, and medical treatment. A maximum of 30 of these hours may include time spent in a student clinic.
      - (iv) Thirty hours of clinical/business practices, to include hygiene, record keeping, medical terminology, professional ethics, business management, human behavior, client interaction, state and local laws and three hours of communicable diseases.
    2. In addition to the 300-hour educational requirement, the applicant must have successfully completed certification in American Red Cross first aid and American Heart Association CPR or the equivalent, and provide current certification.
    3. Persons issued a permit as a Massage Therapist I may provide therapy within the jurisdiction of the unified government only when under the supervision of a person issued a permit by the unified government as a Massage Therapist II. Supervision shall mean the supervising therapist is available on the premises and is personally aware the Massage Therapist I is conducting massage therapy on a client. It shall be a violation of this chapter for a Massage Therapist I to conduct unsupervised massage therapy within the city. Persons issued a permit as a Massage Therapist I are prohibited from conducting massage therapy off the licensed business premises of the massage establishment.
  - b. *Massage Therapist II.* To be eligible for issuance of a Massage Therapist II permit, an applicant must provide proof of the following:
    - 1.

The applicant has successfully completed a course of instruction consisting of not less than 500 hours in the theory, method or practice of massage. An hour of instruction is defined as 50 minutes of actual instructional time. The curriculum shall include at a minimum:

- (i) One hundred thirty hours of anatomy, physiology and kinesiology, including palpation, range of motion, and physics of joint function.
- (ii) Fifty hours of pathology, including indications and contraindications to massage therapy and palpation.
- (iii) Two hundred fifty hours of theory and practice of massage therapy, at a minimum to include deep tissue techniques, remedial gymnastics, body mechanics of the practitioner, and medical treatment. A maximum of 50 of these hours may include time spent in a student clinic.
- (iv) Fifty-five hours of clinical/business practices, to include hygiene, record keeping, medical terminology, professional ethics, business management, human behavior, client interaction, state and local laws and three hours of communicable diseases.

In addition to the 500-hour educational requirement, the applicant must have successfully completed certification in American Red Cross first aid and American Heart Association CPR or the equivalent, and provide current certification; or

- 2. That the applicant is currently licensed or has been licensed within six months of the date of application, by a licensing authority that requires a course of instruction, consisting of not less than 500 hours, in the theory, method or practice of massage. The required curriculum must include anatomy, physiology, kinesiology, pathology, first aid and hygiene and practical instruction in massage technique. 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. In addition, the applicant must show proof that they have been licensed in the foreign jurisdiction for a minimum of one year; or
- 3. That the applicant has successfully passed the National Certification Examination for Therapeutic Massage and Bodywork.

- (2) Proof of completion of educational and training requirements must be by certified transcripts. The educational and training requirements required by this chapter may be received from more than one school.
- (3) Individuals licensed with the unified government as massage therapists as of the effective date of the ordinance from which this chapter is derived have until June 1, 1999 to satisfy the education and training requirements of this section, provided all applicants for a massage therapist license in any category must have completed certification in American Red Cross first aid and American Heart Association CPR or the equivalent no later than June 1, 1999; and provided further that the unified



government license administrator is authorized, for good cause shown in writing, to extend the time period to satisfy the education and training requirement of this section until September 1, 1999.

- (4) As of July 1, 1999, all licensed massage therapists applying for a renewal license must show proof that they have received a minimum of 12 hours (50 minutes per hour) of professional massage continuing education during the preceding 12-month licensing period. One hour continuing education credit will be awarded for each hour attendance at programs relating to the theory or clinical application of theory pertaining to the practice of massage, to include, but not be 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 license administrator and/or his designated representative.

(Code 1988, § 20-4; Ord. No. O-92-98, § 1, 10-22-1998)

#### Sec. 20-5. - Student massage therapy.

An individual actively enrolled in and currently attending classes in a course of instruction consisting of not less than 300 hours in the theory, method or practice of massage may conduct massage therapy as a practicum component of the training program, provided the following conditions are met:

- (1) The massage therapy is conducted under the supervision of a Massage Therapist II. For the purposes of this section, supervision shall mean the supervising therapist is available on the premises and is personally aware the student is performing massage therapy on a client. In addition, the supervising therapist must personally observe the student's massage techniques at least once during the massage therapy session.
- (2) All advertisements for massage therapy that will be performed by a student will clearly inform the customer that the massage therapy will be performed by a student under the supervision of a Massage Therapist II.
- (3) Prior to conducting any massage therapy, the student massage therapist will require the customer to sign and acknowledge he has been informed the massage therapy will be conducted by the student under the supervision of a Massage Therapist II. These acknowledgement documents will be maintained by the supervising massage therapist for a period of one year and will be produced at the request of law enforcement officer or unified government official.
- (4) A student massage therapist shall file an application with the unified government license administrator and pay a filing fee of \$30.00 to the unified government license administrator that shall not be refundable. The applicant for a student massage therapist permit shall furnish the following information:
  - a. Name, address, telephone number, date of birth and social security number.

- b. Whether such person has ever been convicted of any crime except minor traffic violations. If any person mentioned in this subsection has been so convicted, a statement must be made giving the place and court in which the conviction was obtained and the sentence imposed as a result of such conviction.
- c. Authorization for the unified government, 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.
- d. Name, address and phone number of school the applicant is attending.

(Code 1988, § 20-5; Ord. No. O-92-98, § 1, 10-22-1998)

Sec. 20-6. - Application for massage therapy business license; fees.

- (a) Every applicant for a license to maintain, operate or conduct any establishment covered by this chapter shall file an application with the unified government license administrator and pay an annual filing fee to the unified government license administrator of \$250.00, which shall not be refundable.
- (b) 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 therefor, and the name, address, and telephone number of each applicant, including any stockholder holding more than ten percent of the stock of the corporation, any partner, when a partnership is involved, and any manager.
- (c) In addition to the foregoing, any applicant for a business license shall furnish the following information:
  - (1) Date of birth and social security number of proposed licensee.
  - (2) Written proof that the applicant is at least 18 years old.
  - (3) Two portrait photographs at least two inches by two inches, and fingerprints, provided that 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.
  - (4) The business, occupation, or employment of the applicant for the three years immediately preceding the date of application.
  - (5) The massage therapy business license history of the applicant, whether such person, partnership or corporation, in previously operating in this or another city or state under license, has had such license revoked or suspended, the reason therefor, and the business activity or occupation subsequent to such action of suspension or revocation.
  - (6) Any criminal convictions, except minor traffic violations, fully disclosing the jurisdiction in which convicted and the offense for which convicted and circumstances thereof.
  - (7) Applicants for renewal of an existing license need provide only that information or documentation necessary to insure up-to-date renewal application processing.
  - (8) If proposed licensee is a corporation, the name, address and telephone number of a resident agent who is a citizen of the county.

- (d) In the case of applicants who intend personally to provide massage therapy, the applicant must also apply for and receive a massage therapist license as provided for in section 20-7.
- (e) The applicant shall also provide authorization for the unified government, 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.

(Code 1988, § 20-6; Ord. No. O-92-98, § 1, 10-22-1998)

Sec. 20-7. - Application for massage therapist permit; fees.

- (a) Any person who desires to perform or provide massage therapy as defined herein, shall file a written application with the unified government license administrator and pay an annual filing fee to the unified government license administrator of \$40.00, which shall not be refundable. A massage therapist license shall be valid for a period of 12 months from the date of issuance. This fee shall cover the cost of processing the application to include the current FBI fingerprint fee and the current KBI fingerprint fee.
- (b) An applicant for a massage therapist permit shall furnish the following information:
  - (1) Name, address, telephone number, date of birth and social security number.
  - (2) Two portrait photographs at least two inches by two inches.
  - (3) Applicant's weight, height, color of hair and eyes, and fingerprints, provided that once an applicant has submitted fingerprints, they shall not be required to submit new fingerprints for any renewal application for that person.
  - (4) Written evidence that the applicant is at least 18 years old.
  - (5) Business, occupation, or employment of the applicant for the three years immediately preceding the date of application.
  - (6) Whether such person has ever been convicted of any crime except minor traffic violations. If any person mentioned in this subsection has been so convicted, a statement must be made giving the place and court in which the conviction was obtained and the sentence imposed as a result of such conviction.
  - (7) The position or function the applicant is being hired to perform within such establishment, if applicable.
  - (8) Proof of the education and experience requirements set forth in section 20-3 herein.
  - (9) Whether the applicant is applying for a Massage Therapist I or II permit.
- (c) The applicant shall also provide authorization for the unified government, its agents, and its 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.

(Code 1988, § 20-7; Ord. No. O-92-98, § 1, 10-22-1998)

Sec. 20-8. - Massage therapy business license application processing.

- (a) Upon receipt of a complete application for a massage therapy business license, the unified government license administrator shall immediately transmit one copy of the application to the chief of police for investigation of the application. In addition, the unified government license administrator shall transmit a copy of the application to the county administrator, public health department, director of planning, and fire marshal.
- (b) It shall be the duty of the chief of police and/or his designee, 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 applied for. The chief of police and/or his designee shall report the results of the investigation to the unified government license administrator not later than 20 working days from the date the application is received by the unified government license administrator.
- (c) It shall be the duty of the public health department, the director of planning and the fire marshal 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 unified government, provided the premises need not be designed or set up for the requirements of a license being issued, and provided further that all other code and zoning requirements must be met. All standards for premises set forth in section 20-13 of this chapter must be met prior to the first day the premises are open for business.
- (d) The public health department, the director of planning and the fire marshal shall report the results of their investigation to the unified government license administrator not later than 20 working days from the date the application is received by the unified government license administrator.
- (e) Upon receipt of the reports from the chief of police, the public health department, the director of planning and the fire marshal, the unified government license administrator shall determine if the application complies with the standards set forth in section 20-10 of this chapter; provided the license application shall be approved or disapproved within 45 days from the date of filing of a completed application with the license administrator's office.

(Code 1988, § 20-8; Ord. No. O-92-98, § 1, 10-22-1998; Ord. No. O-54-11, § 1, 12-1-2011)

#### Sec. 20-9. - Identification cards.

Any massage therapist issued a permit pursuant to the provisions of this chapter shall, at all times when working in an establishment or providing any service regulated by this chapter, have in their possession a valid identification card issued by the unified government bearing the massage therapist's permit number, physical description, and a photograph. Such identification card shall be laminated to prevent alteration. All persons granted permits under this chapter shall at all times keep their permits available for inspection upon request of any person who by law may inspect same. All licensees shall, when conducting in-office massage therapy off their business premises, wear on their clothing in a conspicuous location their identification card.

(Code 1988, § 20-9; Ord. No. O-92-98, § 1, 10-22-1998)

Sec. 20-10. - Issuance of massage therapy business license.

- (a) After the filing of an application in the proper form, the license administrator shall approve the issuance of a license for a massage therapy establishment, unless the license administrator finds that:
- (1) The correct license fee has not been tendered to the unified government, and, in the case of a check or bank draft, honored with payment upon presentation;
  - (2) The operation, as proposed by the applicant, if permitted, would not comply with all applicable laws, including, but not limited to, the unified government's building, zoning, and health regulations;
  - (3) The applicant, if an individual, or any of the stockholders holding more than ten percent of the stock of the corporation, any of the officers and directors, if the applicant is a corporation, or any of the partners, including 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:
    - a. A felony;
    - b. An offense involving sexual misconduct with children;
    - c. Obscenity;
    - d. Promoting prostitution, as defined by K.S.A. 21-3513;
    - e. Solicitation of a lewd or unlawful act;
    - f. Prostitution; or
    - g. Pandering or other sexually related offense.
  - (4) The applicant has knowingly made any false, misleading, or fraudulent statement of fact in the license application or in any document required by the unified government in conjunction therewith;
  - (5) The applicant has had a massage therapy license or other similar permit or license denied, revoked, or suspended for any of the causes listed in this subsection by the unified government or any other state or local agency within five years prior to the date of the application;
  - (6) The applicant is currently licensed for an adult entertainment business (as defined in this Code) or escort service;
  - (7) The applicant, if an individual, or any of the officers and directors, if the applicant is a corporation, or any of the partners, including 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 obtained the age of 18 years; and
  - (8) 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 chapter.

(b)

*The license shall state that it is not transferable or refundable.* The license shall be kept posted in a conspicuous place on the premises of the licensee. If an applicant is disapproved, 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 appeal the determination of the license administrator to the unified board of commissioners; provided that any such appeal must be filed in writing with the unified government clerk within 10 days of mailing of the disapproval.

- (c) Any license issued under the provisions of this chapter shall at all times be displayed by the licensee in an open and conspicuous place on the premises where the licensed business is conducted.

(Code 1988, § 20-10; Ord. No. O-92-98, § 1, 10-22-1998; Ord. No. O-54-11, § 2, 12-1-2011)

#### Sec. 20-11. - Application processing and issuance of massage therapist permit.

The license administrator shall issue a massage therapist permit within 21 days following application, unless he finds that:

- (1) The applicant for the massage therapist license has been convicted of or diverted on:
  - a. A felony;
  - b. An offense involving sexual misconduct with children;
  - c. Obscenity;
  - d. Promoting prostitution, as defined by K.S.A. 21-3513;
  - e. Solicitation of a lewd or unlawful act;
  - f. Prostitution; or
  - g. Pandering or other sexually related offense;
- (2) The applicant has knowingly made any false, misleading, or fraudulent statement of fact in the permit application or in any document required by the unified government in conjunction therewith;
- (3) That the correct permit fee has not been tendered to the unified government, and in the case of a check or bank draft, honored with payment upon presentation;
- (4) That the applicant has not successfully completed the education standards required under the provisions of this chapter; or
- (5) That the chief of police has not approved the granting of the permit.

(Code 1988, § 20-11; Ord. No. O-92-98, § 1, 10-22-1998)

#### Sec. 20-12. - Reserved.

**Editor's note**— Ord. No. O-54-11, § 3, adopted Dec. 1, 2011, repealed § 20-12, which pertained to revocation or suspension of business license and derived from the Code of 1988, § 20-12; Ord. No. O-92-98, § 1, 10-22-1998.

Sec. 20-13. - Revocation of massage therapist permit.

- (a) A massage therapist permit issued by the license administrator shall be revoked or suspended after a public hearing before the license administrator, or his designated representative, where it appears that the employee has been convicted of any offense enumerated in section 20-10(a), or for violation of any of the provisions of this chapter, including the application standards.
- (b) The license administrator, before revoking or suspending any employee permit, shall give the employee at least ten days' written notice of the examination into his conviction record and the opportunity for a public hearing before the license administrator or his designated representative, at which the relevant facts regarding the occurrence of the conviction shall be determined.
- (c) All revocations or suspensions by the license administrator are appealable to the unified government board of commissioners within ten days of the revocation or suspension, provided said appeal must be in writing and delivered to the unified government clerk.

(Code 1988, § 20-13; Ord. No. O-92-98, § 1, 10-22-1998)

Sec. 20-14. - Inspection necessary.

- (a) No business shall be conducted on licensed premises unless an inspection by the public health department or its authorized representative reveals that the establishment complies with each of the following minimum requirements:
  - (1) 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 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 that is fitted with a door capable of being locked.
  - (2) Toilet facilities shall be provided in convenient locations. When five or more massage establishment employees and patrons of different sexes are on the premises at the same time, separate toilet facilities shall be provided. Urinals may be substituted for water closets after one water closet has been provided. Toilets shall be designated as to the sex accommodated therein.
  - (3) Lavatories or wash basins provided with both hot and cold running 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.

- (4) The requirements in subsections (a)(1)—(a)(3) of this section shall not apply to an in-office massage therapy establishment.
- (b) The public health department 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 unified government license administrator and chief of police; provided, however, that nothing contained herein shall be construed to eliminate other requirements of statute or ordinance concerning the maintenance of premises, nor to preclude authorized inspection thereof.
- (Code 1988, § 20-14; Ord. No. O-92-98, § 1, 10-22-1998)

Sec. 20-15. - Inspections; immediate right of entry.

The police department and public health department 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, for the purposes of determining that the provisions of this chapter are complied with. Such inspections shall be made at reasonable times and in a reasonable manner. It shall be unlawful for any licensee 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 or employee to grant immediate access to such inspector shall be grounds for the revocation or suspension of any business license or employee permit.

(Code 1988, § 20-15; Ord. No. O-92-98, § 1, 10-22-1998)

Sec. 20-16. - Operation regulations.

The operation of a massage therapy establishment shall be subject to the following regulations:

- (1) *Hours.* Such business shall be closed and operations shall cease between the hours of 12:00 a.m. and 6:00 a.m. each day.
- (2) *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.
- (3) *Danger to safety, health.* No service shall be given which is clearly dangerous or harmful, in the opinion of the county administrator, his designee, or the public health department, to the safety or health of any person, and after such notice in writing has been delivered to the licensee from such administrator or his designee.
- (4) *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 chapter or during in-office massage therapy, provided, however, that this restriction shall not apply to businesses where the licensed massage therapy is accessory to the predominate business purpose of the establishment, and provided further that no alcohol is permitted on that portion of such premises where massage therapy occurs.



(5) *Conduct of premises.*

- a. All licensees licensed under the provisions of this chapter shall at all times be responsible for the conduct of business on their licensed premises and for any act or conduct of his employees which constitutes a violation of the provisions of this chapter. Any violation of the unified government, 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 the same.
- b. Every portion of a licensed establishment, including appliances, and personnel shall be kept clean and operated in an sanitary condition.
- c. All employees shall be clean and wear clean outer garments. On all premises, 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.
- d. 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.
- e. 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.
- f. 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.
- g. Wet and dry heat rooms, shower compartments, and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs shall be thoroughly cleaned after each use.

(Code 1988, § 20-16; Ord. No. O-92-98, § 1, 10-22-1998)

Sec. 20-17. - Supervision.

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

(Code 1988, § 20-17; Ord. No. O-92-98, § 1, 10-22-1998)

Sec. 20-18. - Employee and patron registers.

- (a) All operators licensed under the provisions of this chapter shall keep and maintain on their premises a current register of all their employees showing 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 unified government police department.
- (b) Every person who engages in or conducts a licensed establishment shall keep a daily register, approved as to form by the police department, of all patrons, with names, addresses, and hours of arrival, hour of departure and, if applicable, the rooms or cubicles assigned. Said daily register shall at all times during business hours be subject to inspection by the public health department and by the police department and shall be kept on file for one year.

(Code 1988, § 20-18; Ord. No. O-92-98, § 1, 10-22-1998)

Sec. 20-19. - 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 massage therapist if accompanied by a parent or legal guardian and a parent or legal guardian has authorized such therapy in writing.

(Code 1988, § 20-19; Ord. No. O-92-98, § 1, 10-22-1998)

Sec. 20-20. - Advertising.

No establishment granted a license under provisions of this chapter 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 section 20-1, or that employees or massage therapists are dressed in any manner other than described in section 20-16(5)c and (5)d and any such establishment shall not indicate in the text of such advertising that any service is available other than those services described in section 20-1.

(Code 1988, § 20-20; Ord. No. O-92-98, § 1, 10-22-1998)

Sec. 20-21. - Transfer of licenses; other licenses and fees.

- (a) No massage therapy business license or massage therapist permits are transferable and such authority as a license or permit confers shall be conferred only on the licensee or permittee named therein.
- (b) Any applications made, fees paid, and licenses and permits obtained under the provisions of this chapter 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 the unified government.

(Code 1988, § 20-21; Ord. No. O-92-98, § 1, 10-22-1998)

Sec. 20-22. - Applicability to existing business.

The operators of any existing massage therapy establishment or in-office massage therapy establishment are required to comply with all provisions of this chapter, subject to the educational and experience requirements set forth in section 20-4.

(Code 1988, § 20-22; Ord. No. O-92-98, § 1, 10-22-1998)

Sec. 20-23. - Exceptions.

The provisions of this chapter 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 chapter 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.

(Code 1988, § 20-23; Ord. No. O-92-98, § 1, 10-22-1998)

Sec. 20-24. - Further regulations.

The chief of police or the county administrator may, after a public hearing, make and enforce reasonable rules and regulations not in conflict with, but to carry out, the intent of this chapter.

(Code 1988, § 20-24; Ord. No. O-92-98, § 1, 10-22-1998)

Sec. 20-25. - Restriction of business to premises.

- (a) All massage therapy (not to include in-office massage therapy) provided for under this chapter shall be conducted on the premises of a licensed massage therapy establishment, provided massage therapy may be conducted in a private residence by a Massage Therapist II, under the following condition: if done at the direction of a licensed healing arts practitioner.
- (b) All licensed massage therapy establishments shall be operated from commercial business premises. All establishments licensed under this chapter, as opposed to a massage parlor licensed under chapter 19, article XII, is permitted in zoning designations C-O and less restrictive designations. Provided further that a massage therapy establishment, as opposed to a massage parlor, does not require the issuance of a special use permit as set out in section 27-579. Operation of such an establishment in a private home, residence or noncommercial business establishment is prohibited. Sole practitioners (therapists who work alone), are required to have both a massage therapist license and massage therapy establishment license and to work from a commercial business premises.

- (c) Massage therapy is not permitted in the guestrooms of hotels unless the hotel is licensed as a massage therapy establishment and the massage therapy is conducted by a licensed massage therapist employed by the hotel.

(Code 1988, § 20-25; Ord. No. O-92-98, § 1, 10-22-1998)

#### Sec. 20-26. - Penalty.

Any person, firm, partnership, association or corporation convicted of violating any of the provisions of this chapter shall be deemed guilty of a public offense and subject to the general penalty provisions of subsection 1-8(a).

(Code 1988, § 20-26; Ord. No. O-92-98, § 1, 10-22-1998)