

#### § 111.04 MASSAGE THERAPY.

(A) *Purpose.* The purpose of this article of the city code is to prohibit massage businesses and services to the public except those licensed as therapeutic massage businesses and massage therapists pursuant to this section. The licensing regulations prescribed herein are necessary in order to protect businesses that are operating legitimate businesses, to prevent criminal activity and to protect the health and welfare of the community. The purpose of this section is not to impose restrictions or limitations on the freedom of protected speech or expression.

(B) *Findings of the City Council.* The City Council makes the following findings regarding the need to license therapeutic massage businesses and therapists and to prohibit all other types of massage businesses and services to the public:

(1) Persons who have bona fide and standardized training in therapeutic massage, health, and hygiene can provide a legitimate and necessary service to the general public.

(2) Health and sanitation regulations governing therapeutic massage businesses and therapists can minimize the risk of the spread of communicable diseases and can promote overall health and sanitation.

(3) Limiting the number of therapeutic massage business licenses and license qualifications for the restrictions on therapeutic massage businesses and therapists can minimize the risk that such businesses and persons will facilitate prostitution and other criminal activity in the community.

(4) Massage services provided by persons with no specialized and standardized training in massage can endanger citizens by facilitating the spread of communicable diseases, by exposing citizens to unhealthy and unsanitary conditions, and by increasing the risk of personal injury.

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(5) Massage businesses which employ persons with no specialized and standardized training can tax law enforcement services because such businesses are more likely to be operated as fronts for prostitution and other criminal activity than operations established by persons with standardized training.

(6) The training of professional massage therapists at accredited institutions is an important means of ensuring the fullest measure of protecting the public health, safety, and welfare.

(C) *Definitions.* The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise:

**ACCREDITED INSTITUTION.** An educational institution holding accredited status with the United States Department of Education or Minnesota Office of Higher Education.

**ACCREDITED PROGRAM.** A professional massage program accredited by the Commission on Massage Therapy Accreditation (COMTA).

**CLEAN.** The absence of dirt, grease, rubbish, garbage, and other offensive, unsightly, or extraneous matter.

**GOOD REPAIR.** Free of corrosion, breaks, cracks, chips, pitting, excessive wear and tear, leaks, obstructions, and similar defects so as to constitute a good and sound condition.

**ISSUING AUTHORITY.** The City Council.

**MASSAGE.** Any method of pressure on, or friction against, or the rubbing, stroking, kneading, tapping, pounding, vibrating, stimulating, or rolling of the external parts of the human body with the hands or with the aid of any mechanical or electrical apparatus, or other appliances or devices, with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment, or other similar preparations.

**MASSAGE THERAPIST.** An individual who practices or administers massage to the public who can demonstrate to the issuing authority that he or she:

(a) Has current insurance coverage of \$1,000,000.00 for professional liability in the practice of massage;

(b) Is affiliated with, employed by, or owns a therapeutic massage business licensed by the city; and

(c) Provides proof that the applicant has met the academic requirements of the issuing authority by providing both of the following:

1. A certified copy of a transcript of academic record from an accredited program or accredited institution that has been approved by the issuing authority, sent directly from the program or institution to the issuing authority; and

2. A copy of the diploma or certificate of graduation from an accredited program or accredited institution that has been approved by the issuing authority, sent directly from the accredited program or institution to the issuing authority. The accredited program or accredited institution must confirm that the applicant has successfully completed at least 500 hours of certified therapeutic massage training with content that includes the subjects of anatomy, physiology, hygiene, ethics, massage theory and research, and massage practice from the same accredited program or accredited institution.

(d) In lieu of the academic requirement in division (c) above, the applicant may substitute providing proof of passing the National Certification Exam offered by the National Certification Board for Therapeutic Massage and Bodywork and a minimum of seven years of full-time work experience as a massage therapist within the United States. The applicant is still required to provide proof of divisions (a) and (b) above.

**OPERATE.** To own, manage, or conduct, or to have control, charge, or custody over.

**PERSON.** Any individual, firm, association, partnership, corporation, joint venture, or combination of individuals.

**THERAPEUTIC MASSAGE BUSINESS.** An entity which operates a business which hires only therapeutic massage therapists licensed by the city to provide therapeutic massage to the public. The owner/operator of a therapeutic massage business need not be licensed as a therapeutic massage therapist if he or she does not at any time practice or administer massage to the public. A **THERAPEUTIC MASSAGE BUSINESS** may employ other individuals such as cosmetologists and estheticians, and these individuals are not required to have a massage therapist license as long as they are not providing therapeutic massage to the public.

**WITHIN THE CITY.** Includes physical presence as well as telephone referrals such as phone-a-massage operations in which the business premises, although not physically located within the city, serves as a point of assignment of employees who respond to requests for services from within the city.

**(D) License required; number of licenses.**

(1) **Therapeutic massage business license.** It shall be unlawful for any person or entity to own, operate, engage in, or carry on, within the city, any type of massage services to the public for consideration without first having obtained a therapeutic massage business license from the city pursuant

to Chapter 110 and this section. The maximum number of business licenses issued by the city at any one time shall be three.

(2) *Massage therapist license*. It shall be unlawful for any individual to practice, administer, or provide massage services to the public for consideration within the city without first having obtained a personal massage therapist license from the city pursuant to this section. The maximum number of personal massage therapist licenses issued by the city at any one time shall be 20.

(3) If the number of massage business licenses or personal licenses meets or exceeds the permitted number of licenses on the effective date of this section, no additional licenses shall be approved. Existing licenses may be renewed; however, should a license not be renewed, or if the license is revoked or lapses, the license shall not be reinstated.

(E) *Exceptions*. A therapeutic massage business or massage therapist license is not required for the following persons and places:

(1) Persons duly licensed by this state to practice medicine, surgery, osteopathy, chiropractic, physical therapy, or podiatry, provided the massage is administered in the regular course of the medical business and not provided as part of a separate and distinct massage business.

(2) Persons duly licensed by this state as beauty culturists or barbers, provided such persons do not hold themselves out as giving massage treatments and provided the massage by beauty culturists is limited to the head, hand, neck, and feet and the massage by barbers is limited to the head and neck.

(3) Persons working solely under the direction and control of a person duly licensed by this state to practice medicine, surgery, osteopathy, chiropractic, physical therapy, or podiatry. Such persons shall only be authorized to practice on the business premises of the employer.

(4) Places duly licensed or operating as a hospital, nursing home, hospice, sanitarium, or group home established for the hospitalization or care of human beings.

(5) Students of an accredited institution who are performing massage services in the course of a clinical component of an accredited program of study, provided that the students are performing the massage services at the location of the accredited institution and provided the students are identified to the public as students of massage therapy. Students of an accredited institution who are performing massage services at clinics or other facilities located outside of the accredited institution must have at least 150 hours of certified therapeutic massage training at the accredited institution prior to performing the therapy outside of the institution, must have proof of liability insurance, and must be identified to the public as a student of massage therapy.

(F) *License application.* In addition to the application information required by Chapter 110, all applicants shall comply with providing the following information:

(1) *Therapeutic massage business license application.* An application for a therapeutic massage business license shall be made on a form supplied by the City Clerk and shall request the following information:

(a) *All applicants.* For all applicants:

1. The legal description of the premises to be licensed together with a plan of the area showing dimensions, location of buildings, street access, and parking facilities.

2. The floor number, street number, suite number(s) and rooms where the massage services are to be conducted.

3. Whenever the application is for premises either planned or under construction or undergoing substantial alteration, the application shall be accompanied by a set of preliminary plans showing the design of the proposed premises to be licensed. If the plans for design are on file with the city's building and inspection department, no plans need be submitted to the issuing authority.

4. The amount of the investment that the applicant has in the business, buildings, premises, fixtures, furniture, and equipment, and proof of the source of such investment. The identity of all other persons investing in the business, building, premises, fixture, furniture and equipment, the amount of their investment and proof of the source of such investment.

5. All applications for licenses, whether business or individual applications, shall be signed and notarized. If the application is that of a natural person, it shall be signed and notarized by such person; if by a corporation, by an officer thereof; if by an incorporated association, by the manager or officer thereof; if by a limited liability company (LLC), by a member thereof. Any falsification of information on the license application shall result in the denial, suspension or revocation of the license.

6. Whether the applicant has had an interest in, as an individual or as part of a corporation, partnership, association, enterprise, business or firm, a massage license that was revoked or suspended within the last five years of the date the license application is submitted to the issuing authority.

7. Such other information as the City Council shall require.

(b) *Individuals.* For applicants who are individuals:

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1. Proof of whether the applicant is a citizen of the United States or a resident alien or has the legal authority to work in the United States.
2. Whether the applicant is currently licensed in other communities to perform massage therapy, and if so, where.
3. Names and addresses and contact information including phone numbers and email addresses of the applicant's employers for the preceding five years and dates for such employment.
4. Whether the applicant has ever been convicted of any felony, crime, or violation of any ordinance other than a minor traffic offense. If so, the applicant shall furnish information as to the time, place and offense for each conviction.
5. Whether the applicant has ever been engaged in the operation of massage services. If so, applicant shall furnish information as to the name, place and length of time of the involvement in such an establishment.

(c) *Partnerships*. For the applicants that are partnerships: the names and addresses of all general and limited partners and all information concerning each general partner as is required in division (F)(1)(b) above. The managing partners shall be designated and the interest of each general and limited partner in the business shall be disclosed. A true copy of the partnership agreement shall be submitted with the application, and if the partnership is required to file a certificate as to a trade name under Minn. Stat. § 333.02, as it may be amended from time to time, a certified copy of such certificate shall be submitted. The license shall be issued in the name of the partnership.

(d) *Corporations and other organizations*. For applicants that are corporations or other types of organizations:

1. The name of the organization, and if incorporated, the state of incorporation.
2. A true copy of the certificate of incorporation, and, if a foreign corporation, a certificate of authority as described in Minn. Stat. § 303.02, as it may be amended from time to time.
3. The name of the general manager, corporate officers, proprietor, and other person in charge of the premises to be licensed, and all the information about said persons as is required in division (F)(1)(b) above.
4. A list of all persons who own or control an interest in the corporation or organization or who are officers of said corporation or organization, together with their addresses and all the information regarding such persons as is required in division (F)(1)(b) above.

(2) *Massage therapist license application.* An application for a massage therapist license shall be made on a form supplied by the City Clerk and shall request the following information:

(a) The applicant's home telephone and cell phone number.

(b) The applicant's physical description, including weight, height, color of eyes, and color of hair. The applicant shall provide a color photocopy of the applicant's driver's license or state-issued I.D. front and back, or any other government-issued I.D.

(c) Whether the applicant has ever been convicted of any felony, crime, or violation of any ordinance other than a minor traffic offense and, if so, the time, place, and offense for each conviction.

(d) Whether the applicant has had an interest in, as an individual or as part of a corporation, partnership, association, enterprise, business or firm, a massage license that was revoked or suspended within the last five years of the date the license application is submitted to the issuing authority.

(e) Three names, resident and business addresses, and current contact information, including a phone number of those residents within the metropolitan area, of good moral character, not related to the applicant or financially interested in the premises of the business, who may be referred to attest to the applicant's character.

(f) Proof of whether the applicant is a U.S. citizen or resident alien or has the legal authority to work in the United States.

(g) Proof that the applicant has met the definition of a massage therapist in division (C) above.

(h) Whether the applicant is currently licensed in other communities to perform massage therapy, and if so, where.

(i) Whether the applicant has ever been engaged in the operation of massage services, and if so, furnish information as to the name, place, dates and length of time of the involvement in such an establishment.

(j) Such other information as the City Council shall require.

(G) *License fee.* The fees for a therapeutic massage business and therapist licenses shall be as set forth by City Council resolution. An investigation fee shall be charged for therapeutic massage business licenses and an individual therapeutic massage license. Each application for a license shall be accompanied by payment in full of the required license and investigation fees.

(H) *License application investigation.* An investigation is required pursuant to § 110.03(C)(5). No investigation fee shall be refunded. Out of state investigations shall require the applicant to pay actual out-of-pocket expenses. A deposit for an out-of-state investigation shall be required in advance, pursuant to City Council resolution and the applicant shall be refunded any unused deposit upon completion of the investigation. The City Council may order and conduct such additional investigation as it deems necessary. Upon completion of its investigation, the Council shall approve or deny the license.

(I) *Inspections.*

(1) *Pre license inspection.* In the case of applications for massage therapy business licenses, the Police Department and Building Official must investigate the premises where the massage therapy business is to be carried on, for the purpose of ensuring that the premises comply with all the sanitation requirements in the section and with the regulations of public health, safety and welfare, pursuant to § 110.11. Licenses shall only be recommended for approval if they meet the safety and sanitary requirements of the city and of the Building Code regulations of the city and state.

(2) *Subsequent inspections.* In light of the high risk of involvement with illegal conduct an establishment providing massage therapy poses to the general public, the issuing authority, environmental health department or designee, and/or the Police Department shall have the right to enter, inspect, and search the licensed premises during the hours in which the licensed premises is open for business to ensure compliance with all provisions of this section. Any search of the licensed premises is subject to reasonableness standards as recognized by the courts; search warrants will be secured when applicable. Any entry into a private residence will require consent, exigent circumstances, or a search warrant. With reasonable notice, the business records of the licensee, including income tax returns, shall be available for inspection during the hours in which the licensed premises is open for business.

(J) *Denial, suspension or revocation.* In addition to the grounds enumerated in § 110.12, the following reasons may be grounds for individual license or business license denial, suspension or revocation:

(1) The applicant has been convicted of criminal prostitution or similar sex offenses or to a partnership or corporation who has in its employ or is owned by any persons convicted of a similar criminal act; or

(2) The owner, manager, lessee or any of the employees are found to be in control or possession of any alcoholic beverages, narcotic drugs or controlled substances, as defined by state statutes, on the premises.

(3) If the holder of a business license fails to maintain with the issuing authority a current list of all employees of such licensed premises. The list shall include all massage therapists licensed under this section.

(4) A material variance in the actual plan and design of the premises from the plans submitted.

(K) *License restrictions.*

(1) *Posting of license.*

(a) *Business license.* A therapeutic massage business license issued must be posted in a conspicuous place on the premises for which it is used.

(b) *Personal massage therapist license.* An annual photo shall be required for a massage therapist license. A person licensed as a massage therapist shall post the massage therapist license, with color photo, in a conspicuous place on the premises at which the therapist is associated. A massage therapist shall have readily available at all times that therapeutic massage services are rendered, the photo identification card issued by the issuing authority. The photo identification card issued by the issuing authority must be presented to each client when providing massage therapy services off-site.

(2) *Licensed premises.*

(a) *Business license.* A therapeutic massage business license is only effective for the compact and contiguous space specified in the approved license application. If the licensed premises is enlarged, altered, or extended, the licensee shall inform the City Clerk within ten business days.

(b) *Personal massage therapist license.* A massage therapist license shall entitle the licensed therapist to perform on-site massage at a business, public gathering, private home, or other site not on the therapeutic massage business premises. It shall be the continuing duty of each licensee to properly notify the City Clerk, within ten business days, of any change in the information or facts required to be furnished on the application for license and failure to comply with this section shall constitute cause for revocation or suspension of such license.

(3) *Affiliation with business required.* A massage therapist shall be employed by, affiliated with, or own a massage business licensed by the city, unless a person or place is specifically exempted from obtaining a therapeutic massage business license in division (E) above.

(4) *Employment of unlicensed massage therapists prohibited.* No therapeutic massage business shall employ or use any person to perform massage who is not licensed as a therapeutic massage therapist under this section, unless the person is specifically exempted from obtaining a therapist license in division (E) above.

(5) *Coverage of genitals during massage.* The licensee shall require that the person who is receiving the massage shall at all times have his or her genitals covered with non-transparent material or clothing.

(6) *Therapist dress/uniform requirements.* Any therapist performing massage shall at all times be dressed professionally, including short sleeved shirts, skirts no shorter than three inches above the knees, no cleavage showing, nails trimmed and neat, hair pulled back and closed-toed shoes.

(7) *Massage of certain body parts prohibited.* At no time shall the massage therapist intentionally massage or offer to massage the penis, scrotum, mons veneris, vulva, or vaginal area of a person.

(8) *Restrictions regarding hours of operation.* No therapeutic massage business shall be open for business, nor will any therapeutic massage therapist offer massage services, before 8:00 a.m. or after 9:00 p.m. any day of the week. No customers or patrons shall be allowed to remain upon the licensed premises after 9:30 p.m. and before 8:00 a.m. daily. Support activities such as cleaning, maintenance and bookkeeping are allowed outside of business hours.

(9) *Proof of local residency required.* In the case of a therapeutic massage business, the licensee, managing partner, or manager of the licensed premise must show proof of residency in one of the following counties: Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington and Wright in Minnesota, and St. Croix or Pierce in Wisconsin. In the case of therapeutic massage therapists, the licensee must show proof of residing in one of the following counties: Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington and Wright in Minnesota, and St. Croix or Pierce in Wisconsin.

(10) *Posting of rates.* All massage businesses must post their rates for service in a prominent place in the entrance or lobby of the business.

(11) *Illegal activities.* In addition to the license restrictions set forth in this section, any advertising by a licensee of any potential unlawful or erotic conduct at the licensed establishment shall be prohibited. A licensee under this chapter shall be strictly responsible for the conduct of the business being operated in compliance with all applicable laws and ordinances, including the actions of any employee or agent of the licensee on the licensed premises.

(12) *Restrictions involving minors.* No person under the age of 18 shall be permitted at any time to be in or on the licensed premises as a customer, guest, or employee, unless accompanied by his or her parent or guardian.

(L) *Restrictions regarding sanitation, health and safety.*

(1) *Toilet room requirements.* A licensed therapeutic massage business shall be equipped with adequate and conveniently located toilet rooms for the accommodation of its employees and patrons. The toilet room shall be well ventilated by natural or mechanical methods and be enclosed with a door. The toilet room shall be kept clean and in good repair and shall be adequately lighted.

(2) *Paper/linen requirements.* A licensed therapeutic massage business shall provide single-service disposal paper or clean linens to cover the table, chair, furniture, or area on which the patron receives the massage; or in the alternative, if the table, chair, or furniture on which the patron receives the massage is made of material impervious to moisture, such table, chair, or furniture shall be properly sanitized after each massage.

(3) *Washing of hands required.* The approved licensed business premises for the compact and contiguous space described and submitted in division (K)(2) above shall contain an on-site sink. The massage therapist shall wash his or her hands and arms with water and soap, anti-bacterial scrubs, alcohol, or other disinfectants prior to and following each massage service performed.

(4) *Door latches and locks.* Doors on massage therapy rooms shall not be locked or capable of being locked. Locks, latches or other devices intended to secure a door so as to prevent it from being opened by any person from either side of the door with or without a key cannot be present on any doors of rooms intended for massage therapy.

