



City of Duluth

411 West First Street
Duluth, Minnesota 55802

Master

File Number: 19-009-O

File ID: 19-009-O

Type: Ordinance

Status: Passed

Version: 1

**Agenda
Section:**

Committee: Public Safety

File Created: 03/04/2019

Subject:

Final Action: 05/28/2019

Title: AN ORDINANCE AMENDING ARTICLE VI OF CHAPTER 5 OF THE DULUTH CITY CODE PERTAINING TO MASSAGE THERAPISTS, ESTABLISHMENTS AND LICENSES.

Internal Notes:

Sponsors:

Enactment Date: 05/28/2019

Attachments: Motion to Amend: Anderson (7-1-1), Motion to Amend:
Anderson (7-0-2)

Enactment Number: 10623

Recommendation:

Hearing Date:

Drafter: lveroeven@duluthmn.gov

Effective Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Council	04/22/2019	read for the first time				
1	City Council	05/13/2019					
1	City Council	05/28/2019	adopted				

Text of Legislative File 19-009-O

AN ORDINANCE AMENDING ARTICLE VI OF CHAPTER 5 OF THE DULUTH CITY CODE PERTAINING TO MASSAGE THERAPISTS, ESTABLISHMENTS AND LICENSES.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Section 5-32 of the Duluth City Code be amended to read as follows:

Sec. 5-32. Definitions.

(a) Accredited institution means an educational institution holding accredited status approved by the United States Department of Education or Minnesota Office of Higher Education.

(b) Accredited program means a professional massage program or educational institution

accredited by the Commission on Massage Therapy Accreditation (COMTA).

~~(ca)~~ Massage. As used in this Article, the term means scientific manipulation of the soft tissue of the body of one person, with the hands or feet of another person or with or without the aid of any mechanical or electrical apparatus or other device with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, liniment, or other similar preparations, for the purpose of relaxation or therapy, but excluding ~~The practice of massage is declared to be distinct from the practice of medicine, surgery, osteopathy, chiropractic, nursing, physical therapy, or podiatry by persons duly licensed or registered in this state to practice such, and does not include athletic directors and trainers employed by a school or bona fide athletic team, beauty culturists, barbers or by practitioners of traditional healing or martial arts.~~

~~(db)~~ Massage establishment. The term means any business establishment having a fixed place of business where any person engages in, or permits another person to be engaged in, the massage of clients, including but not limited to health clubs, beauty salons, saunas and steam baths that offer massage therapy, but excluding residential premises where massage therapy is practiced as a home occupation under the terms of Chapter 50 of this Code and further excluding the premises of medical professionals falling within the purview of Minnesota Statutes section 471.709.

~~(e)~~ Person means any individual, firm, association, partnership, corporation, joint venture, or combination of individuals.

Section 2. That Section 5-34 of the Duluth City Code be amended to read as follows:

Sec. 5-34. ~~Application for License~~ Massage establishments; licenses required.

Application for a massage establishment license shall be made to the city clerk on forms supplied by ~~the said clerk and~~ it shall request ~~contain~~ the following information:

- (a) A description of services to be provided;
- (b) A description and location of the premises to be licensed;
- (c) The full names and addresses of the property owner, business owner, lessee and manager, operator and the date of birth of each; and for the business owner, operator and manager, all of information required under Subdivision (d) of Section 5-36 herein;
- (d) If applicant is a corporation, the names and residence addresses of each of the officers and directors of said corporation and of each stockholder owning more than ten percent of the stock of the corporation, and the address of the corporation itself, if different from the address of the massage estab-lish-ment; and for each such officer, director or stockholder, all of the information required under Subdivision (d) Section 5-36 herein;
- (e) If applicant is a partnership, the names and residence addresses of each of the partners including limited partners, and for each such partner, all of the information required under Subdivision (d) of Section 5-36 herein and the address of the partnership itself, if different from the address of the massage establishment;
- (f) Whether any of the aforementioned individuals have ever been convict-ed of any crime or offense other than a traffic offense, and if so, a description of the offense as to time, place, date and disposition;
- (g) Whether any of the aforementioned individuals has ever held a license to run a massage establishment or similar business in another jurisdiction, and, if so, whether such license was ever revoked, suspended or denied;
- (h) The method of payment under which massage therapists are paid, the economic basis upon which massage therapists are paid, and the full legal name, date of birth and address of each massage therapist providing massage at the applicant's massage establish-ment; and
- (i) Whether any of the individuals identified in ~~response to clause (e)~~ of this Section have been disciplined by the state of Minnesota pursuant to Minnesota Statutes Chapter 146A, or its successor or similar laws of any other jurisdiction.

Section 3. That Section 5-37 of the Duluth City Code be amended to read as follows:

Sec. 5-367. Massage therapists; licenses required.

(a) No massage establishment licensee shall permit any person to perform a massage in the licensee's massage establishment unless such person is licensed as a massage therapist as provided herein. No person shall massage another for compensation unless such person has obtained a massage therapist license as provided herein;

(b) Massage therapist licenses shall be issued by the city clerk after approval by the chief of police. Applicant must be 18 years of age or over, of good moral character and eligible for a license under the terms of Minnesota Statutes Chapter 364 and the provisions of this Article.

(c) Applicants ~~shall~~~~must also~~ have successfully completed 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 an accredited program, accredited institution, or a program or institution licensed or verified by a state licensing board or agency that has been approved by the issuing authority. These training hours must be authenticated by a single provider through a certified copy of the transcript of academic record from the school issuing the training, degree or diploma. In the event the accredited program or accredited institution is no longer in existence, in the sole discretion of the city, a certified copy of the transcript of academic record may be accepted directly from the applicant with an affidavit stating said transcript of academic record is authentic. The transcript of academic record must be from a program or institution that was once accredited and approved by the issuing authority. The certified copy of the transcript of academic record must contain the applicant's name, last address of the accredited institution at the time of closing, and reflect the 500 hours of certified therapeutic massage training with content that includes the subject of anatomy, physiology, hygiene, ethics, massage theory and research, and massage practice as required. ~~a course of study in massage of not less than 500 hours from a recognized school where the theory, method, profession or work of massage is taught; except that Notwithstanding the above, any person licensed as a massage therapist before July 15, 2001, may continue to receive a license despite notwithstanding the fact such therapist has less than 500 hours of training. Applicant shall submit a diploma, certificate or other written proof of educational attainment with the application, including the name and address of the school;~~

(d) ~~All~~ applications for such license shall be signed and sworn to and filed with the city clerk, ~~which~~ The application shall state:

(1) The applicant's full legal name and whether the applicant has ever used or been known by any other name, and if so, the name or names and information concerning dates and places where used.

(2) The applicant's date of birth, home telephone number, and full street addresses and dates at which the applicant has lived during the preceding ten years. A color photocopy of the front and back of the applicant's Minnesota driver's license, Minnesota I.D. or any other government-issued photo identification.

(3) The type, name, location, and dates of every business or occupation the applicant has been engaged in during the preceding ten years.

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

(5) 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.

(6) Whether the applicant has ever been arrested, charged or 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 date, time, place and offense for which arrests, charges or convictions were had.

(7) Whether the applicant has ever 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 ten years of the date the license application is submitted to the issuing authority.

(8) The full name and address of each massage establishment located in the city at which the applicant will perform massage.

(9) Whether the applicant has ever been the subject of an investigation, public or private, criminal or non-criminal, regarding massage therapy.

(10) Such other relevant information as the chief of police shall require, ~~address, date of birth, criminal record, identification of each massage establishment located in the city at which the applicant will perform massage, if then currently known, and other pertinent information as required by the chief of police.~~ Upon receipt of the application the chief of police shall cause all necessary investigations to be made so that he may approve or disapprove of the license;—

(ed) The fee for such license shall be set in accordance with Section 31-6(a) of this Code. The license year shall be from May 1 to April 30 and shall not be prorated.

Section 4. That Section 5-36 of the Duluth City Code be amended to read as follows:

Sec. 5-376. Issuance; transfer of a license.

(a) All applications for license ~~No license~~ under this Article shall be referred to the chief of police or designee who shall conduct any and all investigations to verify the information on the application, including ordering a computerized criminal history inquiry and/or a driver's license history inquiry on the applicant. The chief of police or designee is authorized to access data maintained in the Minnesota Bureau of Criminal Apprehensions (BCA) Computerized Criminal History information system in accordance with BCA policy. The chief of police or designee may order and conduct such additional investigations as it deems necessary, including but not limited to, contacting other agencies. In addition, all applications must include results of a comprehensive national criminal background check from a background investigative provider approved by the city. The national criminal background check is to be obtained and paid for by the applicant. No license under this Article shall be issued unless it is approved by the chief administrative officer upon advice from the police department. If the application is for a massage establishment license, no license shall be issued ~~and~~ unless the establishment has passed fire and health inspections. Additionally, ~~t~~he chief administrative officer shall not approve any license if he has reasonable grounds to believe:

- (1) That the granting of said license would result in violations of the law;
- (2) That the license application contains false or misleading statements; or
- (3) That other good cause exists for denying the license.

(b) If the chief of police or chief administrative officer finds that they do not have adequate information to evaluate a license application, they may direct the applicant, manager or agent to appear at any reasonable time and place to give under oath information concerning the application. No license shall be granted to any applicant who refuses to appear and cooperate with the investigation.

(c) No massage therapist license issued under the provisions of this Article shall be assigned or transferred by the licensee.

(d) No transfer of a massage establishment license shall be permitted without complying with the requirements of an original application. Within 30 days of any change in the ownership or change in managers or officers of a licensed massage establishment, the license holder shall provide written notice of such change to the city clerk on the form required by the city. The form shall be accompanied by a fee which shall be set in accordance with Section 31-6(a) of this Code. The city clerk shall promptly refer the matter to the chief of police or designee who shall conduct the investigation per subparagraph (a) above. No license shall be transferred unless it is approved by the chief administrative officer upon advice from the police department and unless the establishment has passed fire and health inspections. The failure of any license

holder to comply with the provisions of this paragraph shall be grounds for the revocation of all licenses held by such license holder.

Section 5. That Section 5-38 of the Duluth City Code be amended to read as follows:

Sec. 5-38. Prohibited acts.

(a) No massage establishment shall:

- (1) Remain open between 11:00 p.m. 4:00 a.m. and 6:00 a.m. on any day;
- (2) Hire or contract with as a massage therapist any person who is not licensed pursuant to this Article;
- (3) Allow any alcoholic beverages to be kept, sold, dispensed or consumed on the premises;
- (4) Permit massages to be given in any cubicle, room or booth with a locking door; or
- (5) Violate Sections 34-19, 34-20, 34-21 or 34-22 of the Duluth City Code or any provision of Minnesota Statutes Chapter 146A, or its successor.

(b) No massage therapist shall:

- (1) Massage or offer to massage the genital area of any customer;
- (2) Perform or offer to perform any act prohibited by Section 34-18 of the Duluth City Code;
- (3) Violate any provision of Minnesota Statutes Chapter 146A, or its successor.

Section 6. That this ordinance shall take effect 30 days after its passage and publication.

STATEMENT OF PURPOSE: The purpose of this ordinance is to tighten licensing requirements for massage therapists and massage establishments to protect against illegal prostitution and sex trafficking. Massage therapists will be required to submit an official school transcript proving that they have completed 500 hours of massage therapy education in order to receive a city license. Requiring an official transcript will protect the health and safety of patrons by ensuring that massage therapists have completed the requisite educational requirements. License applicants will also be required to furnish a national criminal history background check to screen out applicants who have criminal convictions related to prostitution and sex trafficking. The transfer of licenses will be regulated. The hours of operation for massage establishments will be limited to normal business hours. Finally, massage establishments must have a single client entrance which must be kept unlocked during business hours.