

**CITY OF MAHTOMEDI
WASHINGTON COUNTY, MINNESOTA
ORDINANCE NO. _____**

**AN ORDINANCE AMENDING MAHTOMEDI CITY CODE CHAPTER 7 TO ADD
SECTION 7.11 RELATED TO THE LICENSING OF MASSAGE THERAPISTS AND
MASSAGE THERAPY BUSINESSES**

THE CITY COUNCIL OF THE CITY OF MAHTOMEDI ORDAINS AS FOLLOWS:

Section One. Amendment. Chapter 7 of the Mahtomedi City Code is hereby amended to added Section 7.11 as follows:

7.11 THERAPEUTIC MASSAGE

1. **Purpose.** The purpose of this section of the City Code is to prohibit the operation of Massage Businesses and the offering of Massage services to the public except by those licensed as Massage Businesses and Massage Therapists pursuant to this section. The licensing regulations prescribed herein are necessary in order to protect 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.
2. **Findings of the City Council.** The City Council makes the following findings regarding the need to license Massage Businesses and Massage therapists and to prohibit all other types of Massage businesses and services to the public:
 - A. 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.
 - B. Health and sanitation regulations governing Massage Businesses and therapists can minimize the risk of the spread of communicable diseases and can promote overall health and sanitation.
 - C. Establishing license qualifications for Massage Businesses and Massage Therapists can minimize the risk that such businesses and persons will facilitate prostitution and other criminal activity in the community.
 - D. 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.

- E. 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.
3. Definitions. The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise:
- A. *Accredited Institution* means an educational institution which is either licensed or registered with the Minnesota Office of Higher Education or accredited by a federally recognized accrediting agency.
 - B. *Accredited Program* means a professional Massage program accredited by the Commission on Massage Therapy Accreditation (COMTA) or a similar organization.
 - C. *Clean* means the absence of dirt, grease, rubbish, garbage, and other offensive, unsightly, or extraneous matter.
 - D. *Good Repair* means 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.
 - E. *Issuing Authority* means the City Council.
 - F. *Massage or Massage Services* means the manual manipulation of the soft tissue of the body to promote, maintain, and restore health and well-being, and may use any of the following techniques: stroking, gliding, lifting, kneading, jostling, vibration, percussion, compression, friction, holding, passive stretching within a person's range of motion, movement or manipulation of the soft tissues, active assistive and resistive movement, and stretching.
 - G. *Massage Therapist* means an individual who practices or administers Massage to the public who can demonstrate to the Issuing Authority that he or she:
 - i. Has current insurance coverage of \$1,000,000.00 for professional liability in the practice of Massage;
 - ii. Is affiliated with, employed by, or owns a Massage Business licensed by the City; and
 - iii. Provides proof that the applicant has met the academic requirements of the Issuing Authority by providing both of the following:
 - a. A certified copy of a transcript of academic record from an Accredited Program or Accredited Institution that has been approved by the Issuing Authority; and

- b. A copy of the diploma or certificate of graduation from an Accredited Program or Accredited Institution that has been approved by 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.
 - iv. In lieu of the academic requirement in subpart G, provision iii above, the applicant may provide proof of passage of the National Certification Exam offered by the National Certification Board for Therapeutic Massage and Bodywork and a minimum of seven (7) years of full-time work experience as a Massage Therapist within the United States. The applicant is still required to provide proof of compliance with subpart G, provisions i and ii.
 - H. *Operate* means to own, manage, or conduct, or to have control, charge, or custody over.
 - I. *Person* means any individual, firm, entity, association, partnership, corporation, joint venture, or combination of individuals.
 - J. *Massage Business* means a place of business where Massage Services are provided to the public for a fee. This term includes businesses which rent/lease space to an independent licensed Massage Therapist. The owner/operator of a Massage Business need not be licensed as a Massage Therapist if he or she does not at any time practice or administer Massage Services to the public. A 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 Massage Services to the public.
 - K. *Within the City* means 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 the provision of Massage services to various locations within the City.
4. License Required.
- A. Massage Business License. It shall be unlawful for any person to own, operate, engage in, or carry on, within the City, any type of Massage Services business to the public for compensation without first having obtained a Massage Business license from the City pursuant to this section.

- B. Massage Therapist License. It shall be unlawful for any person to practice, administer, or provide Massage Services to the public for compensation within the City without first having obtained a personal Massage Therapist license from the City pursuant to this section.
- C. Licensing Compliance. Notwithstanding any other provision of this Section, Massage Therapy Businesses and Massage Therapists shall have until September 1, 2022 to obtain the requisite Massage Therapy Business and Massage Therapist licenses.

5. Exceptions.

A Massage Business or Massage Therapist license is not required for the following persons and places:

- A. Persons duly licensed by this state to practice medicine, surgery, osteopathy, chiropractic, physical therapy, or podiatry, provided the Massage is administered by the individual in the regular course of the medical business and not provided as part of a separate and distinct Massage Business.
- B. 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.
- C. Persons hired or employed by a person duly licensed by this state pursuant to Minnesota Statutes Chapters 147, 148, or a dental professional licensed under Chapter 150A. Such persons shall only be authorized to provide Massage services on the business premises of the employer.
- D. Places duly licensed or operating as a hospital, nursing home, hospice, sanitarium, or group home established for the hospitalization or care of human beings.
- E. 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 may perform Massage Services at clinics or other facilities located outside of the accredited institution provided that they have at least 150 hours of certified therapeutic Massage training at the accredited institution prior to performing the therapy outside of the institution, have proof of liability insurance, and are identified to the public as a student of Massage therapy.
- F. Persons or organizations providing temporary Massage Services such as “chair massages” provided the following requirements are met:

- i. The Massage is provided in a place of business where the Massage can easily be seen by any employee or visitor on the premises;
 - ii. The location does not hold a license to sell alcoholic beverages;
 - iii. Massages are offered at the location no more than ten (10) days per calendar year;
 - iv. Each recipient of a Massage remains in an upright position, either sitting or standing; and
 - v. Each recipient of a Massage remains in the normal daytime attire worn when entering the business and does not remove any clothing except outerwear such as a coat or jacket.
6. License Application. All applicants shall complete and submit the requisite license application form provided by the City and provide all information required therein, as well as comply with providing the following information:
 - A. Massage Business License Application. An application for a Massage Business license shall be made on a form supplied by the City Clerk and shall request the following information:
 - i. All Applicants. For all applicants:
 - a. 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.
 - b. The floor number, street number, suite number(s) and rooms where the Massage services are to be conducted.
 - c. 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.
 - d. 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.

- e. 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 (5) years of the date the license application is submitted to the Issuing Authority.
 - f. Such other information as City staff or the City Council shall require.
- ii. Individuals. For applicants who are individuals:
- a. Whether the applicant is currently licensed in other communities to perform Massage Services, and if so, where.
 - b. Names and addresses and contact information including phone numbers and email addresses of the applicant's employers for the preceding five (5) years and dates for such employment.
 - c. 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.
 - d. Whether the applicant has ever been engaged in the operation of a Massage Business or worked as a Massage Therapist. If so, applicant shall furnish information as to the name, place and length of time of the involvement in such an establishment and list any current and prior Massage Business or Massage Therapist licenses.
- iii. Partnerships. For 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 provision ii of this section. 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, a certified copy of such certificate shall be submitted. The license shall be issued in the name of the partnership.
- iv. Corporations and Other Organizations or Entities. For applicants that are corporations or other types of organizations:
- a. The name of the organization, and if incorporated, the state of incorporation.

- b. A true copy of the certificate of incorporation, and, if a foreign corporation, a certificate of authority as described in Minn. Stat. Cha. 303.
 - c. 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 subpart A, provision ii, of this subdivision.
 - d. 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 subpart A, provision, of this subdivision.
- B. 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:
- i. The applicant's home telephone and cell phone number.
 - ii. 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.
 - iii. 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.
 - iv. Whether the applicant has had an interest in, as an individual or as part of a corporation, partnership, association, enterprise, entity, business or firm, a Massage license that was revoked or suspended within the last five (5) years of the date the license application is submitted to the Issuing Authority.
 - v. The names, residential and business addresses, and current contact information, including a phone number, for three (3) 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.
 - vi. Proof that the applicant has met the definition of a Massage Therapist in this section.
 - vii. Whether the applicant is currently licensed in other communities to perform Massage services, and if so, where.

viii. Whether the applicant has ever been engaged in the operation of a Massage Business or offered Massage Services, and if so, information as to the name, place, dates and length of time of the involvement in such an establishment or provision of Massage Services, including a list of all current and prior Massage Business or Massage Therapist licenses.

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

7. License Fee. The fees for Massage Business and Massage Therapist licenses shall be as set forth in the City's fee schedule. An investigation fee shall be charged for Massage Business licenses and individual Massage Therapist licenses. Each application for a license shall be accompanied by payment in full of the required license and investigation fees. An application shall be deemed incomplete unless it is accompanied with the required fees, all documentation required by this section, and is completed in its entirety.
8. License Application Investigation. A background investigation is required prior to the issuance of any license. No investigation fee in part or whole 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, 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 receipt of a complete license application and completion of the investigation by the Washington County Sheriff's department, the council shall approve or deny the license.
9. Inspections. In light of the high risk of involvement with illegal conduct an establishment providing Massage Therapy poses to the general public, City staff and/or the Washington County Sheriff's 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.
10. Denial, Suspension or Revocation. In addition to the grounds found elsewhere in the City Code, the following reasons may be grounds for the denial, suspension, or revocation of a Massage Therapist or Massage Business license:
 - A. The applicant has been convicted of criminal prostitution, similar sex offenses, or other crimes directly related to the offering of Massage therapy services or the running of a Massage Business.

- B. The applicant is a partnership, corporation, or other entity which has in its employ or is owned by any persons convicted of criminal prostitution, similar sex offenses, or other crimes directly related to the offering of Massage therapy services or the running of a Massage Business.
- C. 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.
- D. 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.
- E. A material variance in the actual plan and design of the premises from the plans submitted.
- F. There is any fraud, deception, or misstatement on the license application.
- G. The owner, manager, lessee, or their employees or any Massage Therapist, are convicted of any ordinance violation or crime occurring on the licensed premises.
- H. The licensed premises are not located in an approved zoning district or otherwise do not meet the health and safety standards found within the City Code for the licensed premises.
- I. The applicant is delinquent upon its payment to the City of taxes, fines, or penalties assessed or imposed against the applicant.
- J. The licensed activity is conducted in such a manner as to constitute a breach of the peace, a menace to the health, safety, or welfare of the public, or a disturbance of the peace or comfort of the residents of the City, upon recommendation of the Washington County Sheriff's Department or an appropriate City official.
- K. The licensee fails to continuously comply with all conditions required as precedent to approval of the license of the requirements of this section of the City Code.
- L. Based on the findings of a background investigation, granting a license would be a menace to the safety, health, morals, or welfare of the public.
- M. The applicant or licensee is not of good moral character.
- N. The applicant has had an interest in, as an individual or as part of a partnership, corporation, or other entity, a Massage Business or individual Massage

Therapist license that was denied, revoked, suspended, recommended for denial, or not renewed by any issuing authority, including other cities or states, within ten (10) years from the date the license application was submitted to the City.

11. License Restrictions.

A. Posting of License.

- i. Business License. A Massage Business license must be posted in a conspicuous place on the premises for which it is issued.
- ii. Massage Therapist License. A person licensed as a Massage Therapist shall post the Massage Therapist license, along with a 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 Massage services are rendered a government-issued photo identification card.

B. Licensed Premises.

- i. Business License. A Massage Business license is only effective for the compact and contiguous space specified in the approved license application. If, following issuance of the license, the licensed premises is enlarged, altered, or extended, the licensee shall inform the City Clerk of the same within ten (10) business days of the enlargement, alteration, or extension. The licensee shall meet with designated City staff who shall confirm that the enlarged, altered, or expanded space is in full compliance with all City regulations, including the building code. If the enlarged, altered, or expanded space is in full compliance with all City regulations, the business license shall be amended to encompass the larger space. A massage business license shall be valid, unless earlier revoked or suspended, for a period of one (1) year from the date of issuance.
- ii. 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 Massage Business premises. It shall be the continuing duty of each licensee to notify the City Clerk, within ten (10) 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. A massage business license shall be valid, unless earlier revoked or suspended, for a period of one (1) year from the date of issuance.

C. 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 Massage Business license pursuant to this section.

- D. Employment of Unlicensed Massage Therapists Prohibited. No Massage Business shall employ or use any person to perform Massage services who is not licensed as a Massage Therapist under this section, unless the person is specifically exempted from obtaining a Massage Therapist license pursuant to this section.
- E. 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.
- F. Therapist Dress Requirements. Any Massage Therapist performing Massage shall at all times be dressed professionally.
- G. 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, breasts, or vaginal area of a person.
- H. Restrictions Regarding Hours of Operation. No Massage Business shall be open for business, nor will any Massage Therapist offer Massage services, before 8:00 a.m. or after 10:00 p.m. any day of the week. No customers or patrons shall be allowed to remain upon the licensed premises after 10:30 p.m. and before 8:00 a.m. daily. Support activities such as cleaning, maintenance and bookkeeping are allowed outside of business hours.
- I. 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 or by a licensed Massage Therapist shall be prohibited. A licensee under this section shall be strictly responsible for the conduct of the business being operated in compliance with all applicable law and ordinances, including the actions of any employee or agent of the licensee on the licensed premises.
- J. Restrictions Involving Minors. No person under the age of eighteen (18) shall be permitted at any time to be in or on the licensed premises as a massage customer, guest, or employee, unless accompanied by his/her parent or guardian.
- K. Restrictions Involving Habitation. The premises of a licensed Massage Business, other than a massage business legally conducted as a home occupation, shall not contain sleeping quarters or living spaces of any kind intended for habitation. In all Massage Businesses, including Massage Businesses legally conducted as a home occupation, no beds, cots, futons, or mattresses shall be located in any area where massage services are provided.

- L. Equipment. All massage services shall be provided on a raised massage therapy table or chair or on a mat similar to those used in yoga.
 - M. Posting of Rates and Licenses. Massage Businesses shall post rates for all massage services offered at the business as well as the Massage Business license and individual massage therapist licenses in a prominent location on the business premises.
 - N. Compliance with Building and Fire Codes. Massage Business premises shall comply with all applicable fire and building code requirements.
12. Restrictions Regarding Sanitation, Health and Safety.
- A. Toilet Room Requirements. A licensed 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.
 - B. Paper/Linen Requirements. A licensed 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.
 - C. Washing of Hands Required. The licensed business premises 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.
 - D. 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. The front door of any Massage Business shall remain unlocked during all hours of operation, except that interior and exterior doors may remain locked when the business is open if the only persons at the business are a single massage therapist providing massage services and customers receiving massages, and the door is able to be opened without a key from inside by way of a crash bar or other mechanism that allows anyone to open the door without a key from inside of the room where the door is located.

Section Two. Effective Date. This Ordinance shall be in full force and effect upon its passage and publication as provided by law. Notwithstanding the foregoing, the effective date of this Ordinance and the licensing requirements herein shall be August 3, 2022.

Passed in regular session of the City Council on the _____ day of _____, 2022.

Motion for adoption by:

Seconded by:

Ayes:

Nays:

Abstained:

Absent:

CITY OF MAHTOMEDI

By _____
Judson Marshall
Its Mayor

Attest:

By: _____
Jerene Rogers
Its City Clerk

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