



Welcome - Please turn off or silence all cell phones during the Study Session.

Meetings are televised everyday on Channel 2 at 7 p.m. and midnight

Study Session:

1. Quarterly Report – Leavenworth Unified School District No. 453 (pg. 2)
2. Leavenworth County Port Authority Revised Agreement (pg. 3)
3. Review and Discuss Chapter 26, Article III – Massage Establishments, Bathhouses, Modeling Studios and Body Painting Studios (pg. 12)
4. K-7 and Parallel Traffic Issue (pg. 80)

**STUDY SESSION POLICY REPORT
PRESENTATION BY
LEAVENWORTH UNIFIED SCHOOL DISTRICT NO. 453**

OCTOBER 9, 2018

Prepared by:



Carla K. Williamson, CMC
City Clerk

Reviewed by:



Paul Kramer
City Manager

ISSUE:

Superintendent Mike Roth with Leavenworth Unified School District No. 453 will provide a quarterly update to the City Commission.

Policy Report
Leavenworth County Port Authority Revised Agreement
Oct. 2, 2018

Prepared by:



Paul Kramer
City Manager

Background:

The City of Leavenworth and Leavenworth County entered into an agreement in 1969 to establish the Leavenworth County Port Authority (LCPA).

A key provision of that agreement is the way in which the five-member board is selected. Based on the original agreement, all board members must be jointly selected by the parties to the agreement (both the City and County). In the decades that followed, the board remained largely static, but periodic vacancies were filled without issue by the governing bodies informally taking turns nominating and then confirming board selections.

To be clear, there are not now, nor have their ever been “City Seats” on the board or “County Seats” on the board. All members of the LCPA board have been jointly approved by the Leavenworth City Commission and the Leavenworth County Board of County Commission.

Issue:

City staff has received a proposed amended agreement drafted and approved by the BOCC and sent to the City for consideration.

The primary changes are:

1. Updated state statute information related to laws governing the organization
2. A fully revised “Membership” section giving the BOCC the sole authority to fill the LCPA board.
3. There is some clarification that the primary funding for the LCPA shall be from Leavenworth County. In original agreement, ongoing funding was not directly, nor clearly addressed.

The revised agreement is before the Commission for initial discussion.

DRAFT

AMENDMENT TO LEAVENWORTH COUNTY PORT AUTHORITY AGREEMENT

WHEREAS the city of Leavenworth, Kansas, ("City") and the county of Leavenworth, Kansas, ("County") entered into an agreement creating a joint port authority ("Port Authority", "Leavenworth Area Port Authority", "Leavenworth County Port Authority")) on or about December 29, 1969; and

WHEREAS the city and county ("Parties") find it to be in the best interests of the citizens of Leavenworth county that the agreement creating the port authority be amended to reflect the de facto operation of the port authority, optimize the operation of the port authority and allow for ex-officio participation by the other incorporated cities of the county in the planning of economic development projects of the port authority; and

WHEREAS the parties have taken all required and necessary actions to authorize the entry into this agreement; and

WHEREAS the amendment of the agreement creating a joint port authority, as provided for herein, does not, and is not intended to, create a new port authority and is authorized under K.S.A. 12-3402(a);

IT IS THEREFORE AGREED that the agreement between the city and county entered into on or about December 29, 1969 be amended as follows:

I. PURPOSE. There is hereby established by the of the parties a Port Authority pursuant to Chapter 89, 1969 Session Laws of the State of Kansas and the provisions of K.S.A. 12-3402, et seq., and as may be amended. Such Port Authority shall be called the Leavenworth County Port Authority ("Port Authority"). The Port Authority shall be for the purpose of promoting commerce, prosperity, industry, improvement of the health and living conditions of the people, for the promotion of the general welfare and the economic development of the county.

II. JOINT AUTHORITY. The port authority hereby established may consider the combining with other port authorities. Prior to any such combining the port authority shall present to the parties a study outlining the merits of such combining. No such combining shall take place without the express approval of the parties and the entry into an agreement in accord with the provisions of K.S.A. 12-3402, et seq.

III. JURISDICTION. The area of jurisdiction of the Port Authority shall include all of the territory of the city and county, or combination thereof, comprising it, together with any other

property outside thereof conveyed to it or over which it exercises control pursuant to K.S.A. 12-3406.

IV. MEMBERSHIP. The board of directors of the port authority shall consist of five (5) members appointed by the board of county commissioners of Leavenworth county. Each director shall serve a term of four (4) years or until their successor is appointed. Those directors appointed and serving at the time of the adoption of these amendments shall serve the term to which they were appointed. The directors shall serve without compensation, but shall be entitled to receive their necessary and actual expenses incurred by them as directors. The directors shall organize themselves, maintain regular minutes and records of the Port Authority, which records and minutes shall be open to the public. The directors shall comply with the provisions of the Kansas Open Meetings Act and Kansas Open Records Act. All directors shall comply strictly with the conflict of interest provisions of Chapter 89, Session Laws of the State of Kansas and the provisions of K.S.A. 12-3402, et seq., and as may be amended and shall be deemed to have an affirmative duty to disclose any potential conflict of interest to the remaining directors and to the parties to this Agreement and shall recuse themselves from participation in the business of the port authority in which they have a conflict of interest.

V. POWERS OF THE PORT AUTHORITY. The port authority shall have those powers set forth in Chapter 89, Session Laws of the State of Kansas and the provisions of K.S.A. 12-3402, et seq., and as may be amended. The powers of the authority are to be liberally construed so as to allow for the proper exercise of authority in accomplishing the purpose of the port authority.

VI. FUNDING OF THE PORT AUTHORITY. The port authority shall have the authority granted to it by the provisions of Chapter 89, 1969 Session Laws of the State of Kansas, and the provisions of K.S.A. 12-3402, et seq., and as may be amended, to acquire funding for the operation of the port authority. The port authority shall be authorized to accept funding from the federal and state governments and the agencies thereof, the county, the cities of Leavenworth county, any regional governmental agency, private contributors and donations and from the development funds created by Interlocal Agreements dated October 30, 1989 and November 26, 1989. The county shall provide for the primary funding for the port authority and the port authority shall apply to the county for such funding as is required to accomplish the purpose of the port authority. The port authority shall request such funding from the county through the annual budget process of the county.

VII. ISSUANCE OF BONDS. The port authority may exercise the authority granted it under the provisions of Chapter 89, Session Laws of the State of Kansas and the provisions of K.S.A. 12-3402, et seq, and as may be amended. As provided for by K.S.A. 12-3415(b) the port authority shall not issue bonds without first having received approval, by resolution, of the governing bodies of the parties.

VIII. DEVELOPMENT PLANS. The port authority shall prepare or cause to be prepared plans for the development of the area within its jurisdiction as provided for by K.S.A. 12-3407. Such plans, as adopted by the board of directors of the port authority, may be modified as provided for by K.S.A. 12-3408.

IX. SEVERABILITY. If any one or more of the provisions of this agreement shall be declared void, or if any one or more of this agreement shall be superseded by any legislation, the validity of the remainder of this agreement shall not be affected.

X. EX OFFICIO REPRESENTATION. The incorporated cities of the county not party to this agreement may appoint a representative to the board of directors of the port authority. Such representative shall serve in an ex officio capacity and shall not be entitled to vote on matters before the board of directors or be counted in determining a quorum for meeting of the board of directors. The Leavenworth County Development Corporation may appoint a representative to the board of directors of the port authority in a like ex officio capacity.

XI. MISCELLANEOUS. The parties hereby ratify all acts of the port authority taken prior to the date of the entry into this agreement. The parties agree that all obligations of the port authority, whether by contract or by interlocal agreement, existing at the time of the date of the entry into this agreement, remain in full force and effect unless otherwise modified, amended or discharged by by separate agreement.

XII. EFFECTIVE DATE OF AMENDMENT The amendments contained herein shall become effective upon the adoption of this agreement by the parties and upon the filing of the same with the County Clerk of Leavenworth County, Kansas.

AN ORDINANCE DECLARING THERE IS A NEED FOR THE ESTABLISHMENT OF A PORT AUTHORITY IN THE CITY OF LEAVENWORTH, KANSAS; CREATING THE SAID AUTHORITY AND AUTHORIZING THE GOVERNING BODY OF THE CITY OF LEAVENWORTH, KANSAS TO ENTER INTO AN AGREEMENT WITH THE BOARD OF COUNTY COMMISSIONERS OF LEAVENWORTH COUNTY, KANSAS FOR THE FORMATION OF A JOINT PORT AUTHORITY.

WHEREAS, under Chapter 89; Session Laws of Kansas, 1969, Cities and Counties have been given the right to establish a Port Authority by declaring that there is a need for such Authority, and

WHEREAS, the Governing Body of the City of Leavenworth, Kansas does hereby find that there is a need for a Port Authority and that the same should be created and established, and

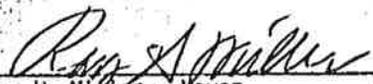
WHEREAS, Chapter 89 of the Session Laws of Kansas, 1969, authorizes any City or County to combine to form a Joint Port Authority by executing a cooperative agreement by the respective Governing Bodies.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAVENWORTH, KANSAS

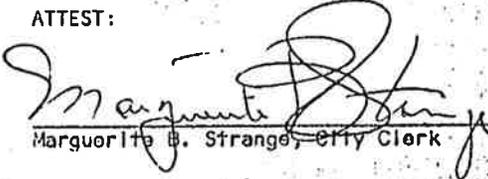
Section 1. That there is hereby established a Port Authority for the City of Leavenworth, Kansas.

Section 2. That the Governing Body is hereby authorized to enter into an agreement with the Board of County Commissioners, for the formation of a Joint Port Authority.

Section 3. That this Ordinance shall take effect and be in force from and after its passage, approval and publication in the Leavenworth Times, the official newspaper of the City of Leavenworth, Kansas.


Ray H. Miller - Mayor

ATTEST:


Marguerite B. Strange, City Clerk

Passed and Approved:
December 30, 1969

Published:

LEAVENWORTH COUNTY PORT AUTHORITY AGREEMENT

- PARTIES: Board of County Commissioners, Leavenworth County, Kansas, Governing Eody of the City of Leavenworth, Kansas.!
- AREA: All the incorporated and unincorporated areas lying within the jurisdiction, under the Port Authority Act, of the parties to this Agreement including submerged land, and air space contiguous to such area.
- PURPOSE: Establishment of Leavenworth County Port Authority, investigation of the feasibility of a joint port authority for any appropriate northeast Kansas area, promotion of commerce, prosperity, industry, improvement of the health and living conditions of the people of this State, and for the promotion of the general welfare.

A G R E E M E N T

WHEREAS, the above parties to this agreement have by appropriate ordinance or resolution declared there to be a need for the establishing of a Port Authority for Leavenworth County, and the cities therein, for the pomotion of the general welfare; and

WHEREAS, authority for the establishing of such a Port Authority has been provided by Chapter 89, 1969 Session Laws of the State of Kansas, the parties hereby agree as follows:

- I. PURPOSE. There is hereby established by the Agreement of the parties a Port Authority pursuant to Chapter 89, Laws 1969. Such Port Authority shall be called the Leavenworth County Port Authority. The Port Authority shall be for the purpose of promoting commerce, prosperity, industry, improvement of the health and living conditions of the people, and for the promotion of the general welfare.
- II. JOINT AUTHORITY. The Port Authority hereby established shall, upon its organization, investigate and determine the advantages anddisadvantages of the combining of this Port Authority with other Port Authorities to form a joint Port Authority in any area within the Northeast Kansas Region. The investigation and determination of the Authority shall be reduced to writing and such report when completed shall be furnished to the parties of this Agreement. For the purpose of making such determination, the parties to this Agreement shall respectively contribute to the operating budget of the Port Authority an initial sum of Five Hundred Dollars each. Such additional sums as may be necessary, in the judgment of the parties to this Agreement, shall be provided for this purpose to the Port Authority.

III. JURISDICTION. The jurisdiction of the Leavenworth County Port Authority shall include all of the territory lying within the cities and counties which are parties hereto, all submerged lands, uplands, and air space contiguous to such territory, and any other property outside the territory of the parties to this Agreement conveyed to the Port Authority or over which it may obtain control pursuant to Section 6 (a) of Chapter 89, Laws of 1969.

IV. MEMBERSHIP. The Leavenworth County Port Authority shall consist of five members, to be selected jointly by the parties to this Agreement as follows:

Position 1	- - - - -	1 year
Position 2	- - - - -	2 years
Position 3	- - - - -	3 years
Position 4	- - - - -	4 years
Position 5	- - - - -	4 years

The successor to each position shall serve a term of four (IV) years. All members appointed in the above manner shall be considered directors of the Leavenworth County Port Authority. The directors shall serve without compensation, but shall be entitled to receive their necessary and actual expenses. The directors shall organize themselves, maintain regular minutes and records of the Port Authority, which records and minutes shall be open to the public. All directors shall comply strictly with the conflict of interest provisions of Chapter 89, Laws of 1969, and shall be deemed to have an affirmative duty to disclose any potential conflict of interest to the remaining directors and to the parties to this Agreement.

V. POWERS OF AUTHORITY. The Leavenworth County Port Authority shall have all those powers provided by Chapter 89, Laws of 1969, which shall include, but shall not necessarily be limited to, the power to purchase, construct, sell, lease and operate docks, wharves, warehouses, piers and other ports, terminals or other transportation facilities; to borrow money from private financial institutions, borrow money from private financial institutions, any agency of the State of Kansas or the United States, and to issue evidence of indebtedness therefor, including the encumbering of the assets of the Authority; to apply for and receive monies from the State of Kansas or the United States or any agency or instrumentality thereof, to construct, straighten, deepen or improve any canal, channel, river or stream or other water course; to acquire, own, hold, sell, lease and otherwise operate any real or personal property; to acquire, own, maintain, sell or lease any land within this jurisdiction which the Authority may be deemed desirable for development; to apply to proper United States officials for the right to establish, operate and maintain foreign trade zones; to exercise the right of eminent domain to appropriate any land, rights, rights-of-way, franchises, easements or other property necessary for the construction or efficient operation of any facility of the Port Authority included within its official plan; to maintain such funds as it deems necessary; to direct its agents or employees to make necessary surveys and examination of lands within its jurisdiction; to sell or lease

real or personal property not needed for the operation of the Port Authority, and to grant easements and rights-of-way over property of the Port Authority; and to promote, advertise and publicize the Port and its facilities, and to provide traffic information and other statistics to interested parties.

VI. ISSUANCE OF BONDS. The Port Authority shall, to pay all or any part of the cost of acquiring land or interests therein, constructing, equipping and furnishing buildings, structures and other port and transportation facilities, have the authority to borrow money therefor and to issue negotiable bonds of such Port Authority in such amount as the directors shall deem necessary. To secure the prompt payment of the principal and interest of such bonds, the Port Authority shall be authorized to agree to the use and disposition of the proceeds of the sale of bonds; to agree to the operation of the facilities of the Authority and the collection and disposition of revenues derived therefrom; to agree as to any rights, liabilities, powers and duties arising from the breach of any agreement entered into in authorizing and issuing bonds; to agree to carry insurance upon the buildings and facilities and upon the use and occupancy thereof, as may be deemed necessary in the judgment of the directors; to enter trust agreements with respect to the receipt of income and revenue pledged to the holders of bonds; to fix charges and fees to be imposed in connection with the use of any buildings or other facilities of the Port Authority. Any and all such agreements shall be binding upon the Port Authority, its agents and employees and upon its successors in interest.

VII. DEVELOPMENT PLAN. The Port Authority shall, as soon as practicable, prepare or cause to be prepared a plan for the future development of existing port facilities or other property within the jurisdiction of the Port Authority, including such maps, profiles and other data as necessary to set forth the location and character of the work to be undertaken by the Port Authority.

VIII. SEPARABILITY. If any one or more of the provisions of this agreement, shall be declared void, or if any one or more of the provisions of this agreement shall be superseded by any legislation, the validity of the remainder of this agreement shall not be affected.

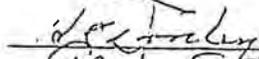
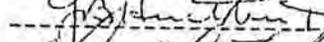
IX. EFFECTIVE DATE. This agreement shall become effective upon its adoption by two or more of the parties hereto, by execution of the original agreement or any duplicate original thereof, and upon the filing of same with the County Clerk of Leavenworth County, Kansas.

APPROVED:


John C. Tillotson
Leavenworth County Attorney


County Clerk of Leavenworth
County, Kansas

Board of County Commissioners
of Leavenworth County, Kansas


Thomas J. Brown, Jr.
Thomas J. Brown, Jr.,
City Attorney
Leavenworth, Kansas

Margaret Strong
City Clerk
City of Leavenworth, Kansas

The Governing Body of the
City of Leavenworth, Kansas
By:

Ray Atiller
Mayor

Henry Flora

Mani Ahlman

W. H. Johnson

W. H. Johnson

**POLICY REPORT
STUDY SESSION
REVIEW AND DISCUSS CHAPTER 26 BUSINESSES
CODE OF ORDINANCES ARTICLE III-MASSAGE ESTABLISHMENTS,
BATHHOUSES, MODELING STUDIOS AND BODY PAINTING STUDIOS**

OCTOBER 2, 2018

Prepared by:


Carla K. Williamson, CMC
City Clerk

Reviewed by:


Paul Kramer
City Manager

BACKGROUND/ISSUE

- Review and discuss a revision/amendment to Chapter 26 Article III of the Code of Ordinance for the City of Leavenworth.
- The City Clerk's Office receives several inquiries each year regarding Massage Establishment businesses in residential homes. The Code does not specify whether a Massage Establishment must be in a commercial location or if residential operation is allowed or prohibited. The Development Regulations do not prohibit Massage Establishments as a home-based business however, the requirements in the Code would make a home-based business difficult to accommodate. There are also inquiries about "In-Clients' Office Massage" or "In-Office Massage Therapy". These are the massages conducted on a business premise of a massage client. These types of services are currently prohibited by the Code.
- The Code licenses Massage Therapists. The requirements should be updated. The educational requirements are far less than are required by most municipalities. Our Code also requires "A statement in writing from a licensed physician in the state that he has examined the applicant and believes the applicant to be free of all communicable diseases." Each year we get calls from the licensees, doctor's offices and clinics questioning this requirement and what type of testing is required. Staff would recommend removing this requirement. The Code also requires that a massage therapist purchase a license for each massage establishment that they work for. Staff would recommend amending this in some way. There are various options that the Commission could consider such as one license listing all establishments or the purchase of the first license with a nominal fee for additional licensing.
- Chapter 26, Article III has also been used to license Tattoo Establishments and Tattoo Artists. The Code does not define or address Tattoo Establishments or Tattoo Artists. The only reference is in Appendix F (Schedule of Fees). The licensing of tattooing has been previously interpreted as Body Painting Studios under the City Code. The definition of a

Body Painting Studio in the code does not fit that of tattooing.

Per City Code: *Body painting studios* means the occupation of maintaining, operating and offering any services for compensation of applying paint or other substance, whether transparent or nontransparent, to or on the human body when such body is wholly or partially nude, by any means of application, technique or process.

Per K.S.A. 65-1940 (i) "Tattooing" means the process by which the skin is marked or colored by insertion of nontoxic dyes or pigments by use of a needle into or under the subcutaneous portion of the skin so as to form indelible marks for cosmetic or figurative purposes.

- The Kansas Board of Cosmetology regulates and licenses tattoo establishments and tattoo artists. Staff recently contacted other municipalities and found no other municipality that regulated or licensed tattoo establishments other than licensing under their general business license if applicable.
- This section of the Code also addresses Bathhouses, Modeling Studios and Body Painting Studios. Staff would like to explore the possibility of moving these to a different section of the code.

DISCUSSION ITEMS:

- Consider locations of allowed Massage Establishments
 - Residential
 - Commercial
 - In-office massage therapy
- Massage Therapist
 - Requirements
 - Schooling/training
 - Statement from licensed physician currently required review and eliminate
- Tattoo regulations
 - Discontinue regulating and licensing as the Board of Cosmetology regulates
- Overall update of Article II

ATTACHED:

Chapter 26; Article III

Appendix F-Schedule of Fees for Chapter 26

Various examples from surrounding cities

City of Leavenworth Code of Ordinances Chapter 26 Businesses

ARTICLE III. - MASSAGE ESTABLISHMENTS, BATHHOUSES, MODELING STUDIOS AND BODY PAINTING STUDIOS

DIVISION 1. - GENERALLY

Sec. 26-66. - Penalty for violation of article.

Any person convicted of violating any of the provisions of this article shall be deemed guilty of a class A misdemeanor and subject to the general penalty provisions of this Code, section 1-10.

(Code 1978, § 21-83)

Sec. 26-67. - Definitions.

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

Bathhouse means the occupation of maintaining and operating for compensation any services of baths of all kinds, including all forms and methods of hydrotherapy.

Body painting studios means the occupation of maintaining, operating and offering any services for compensation of applying paint or other substance, whether transparent or nontransparent, to or on the human body when such body is wholly or partially nude, by any means of application, technique or process.

Employee means any person, other than masseurs or masseuses, who renders any service to a permittee under this article and who receives compensation from the permittee or patron.

Massage means 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 establishment means any establishment having a place of business where any person engages in or carries on or permits to be engaged in or carried on any of the activities mentioned in the definition of massage for compensation.

Masseur or *masseuse* means any person who, for any consideration whatsoever, engages in the practice of massage as defined in this section.

Modeling studios means the occupation of maintaining, operating and offering any services for compensation of modeling for the purpose of reproducing the human body wholly or partially in the nude by means of photography, painting, sketching, drawing or otherwise. To be included within the definition of modeling studios is the occupation or practice for compensation of offering one's body, wholly or partially in the nude, for the purpose of having designs of whatever nature applied thereto by whatever process or technique with any kind of substance, whether it is transparent or nontransparent.

Patron means any person over 18 years of age who utilizes or receives the services of any establishment subject to the provisions of this article and under such circumstances that it is reasonably expected that he will pay money or give any other consideration therefor.

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, which school requires a resident course of study not less than 70 hours to be given in not more than three calendar months 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.

(Code 1978, § 21-60)

Cross reference— Definitions generally, § 1-2.

Sec. 26-68. - Fees and permits additional to other requirements.

Any applications made, fees paid and permits obtained under the provisions of this article 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.

(Code 1978, § 21-78(b))

Sec. 26-69. - Inspections, immediate right of entry.

The police department and the department of environmental protection services may from time to time make an inspection of each permitted establishment in this city for the purposes of determining that the provisions of this article are complied with. Such inspections shall be made at reasonable times and in a reasonable manner. It shall be unlawful for any permittee 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 employee to grant immediate access to such inspector shall be grounds for the revocation or suspension of any business or employee permit.

(Code 1978, § 21-72)

Sec. 26-70. - Identification cards.

All employees issued a permit by the chief of police under the provisions of this article shall, at all times when working in an establishment subject to the provisions of this article, have in their possession a valid identification card issued by the city bearing the employee's permit number, the employee's physical description, and a photograph of such employee. Such identification cards shall be laminated to prevent alteration. Provided, that all persons granted permits under this article shall at all times keep their permits available for inspection upon request of any person who by law may inspect such permit.

(Code 1978, § 21-66)

Sec. 26-71. - Operation regulations.

The operation of any bathhouse, massage establishment, modeling studio, or body painting studio 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) *Reserved.*
- (3) *Danger to safety, health prohibited.* No service shall be given which is clearly dangerous or harmful in the opinion of the health director to the safety or health of any person, and after such notice in writing to the licensee from such director.

- (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 permitted under the provisions of this article.
- (5) *Conduct of premises.* All operators permitted under the provisions of this article shall at all times be responsible for the conduct of business on their permitted premises and for any act or conduct of his or any of his employees which constitutes a violation of the provisions of this article. Any violation of city, state or federal laws committed on the permitted premises by any such permittee or employee affecting the eligibility or suitability of such person to hold a license or permit may be grounds for suspension or revocation of such license or permit.
- (6) *Clean and sanitary premises.* Every portion of a permitted establishment, including appliances, and personnel, shall be kept clean and operated in a sanitary condition.
- (7) *Employee hygiene, dressing rooms.* All employees shall be clean and wear clean outer garments which use is restricted to the permitted 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.
- (8) *Employee clothing.* All employees, masseurs and masseuses must be modestly attired. Diaphanous, flimsy, transparent, formfitting or tight clothing is prohibited. Clothing must cover the employees', masseurs' or masseuses' chests at all times. Hemlines of skirts, dresses, or other such attire may be no higher than the top of the knee.
- (9) *Genitals to be kept covered.* The private parts of patrons must be covered by towels, cloths or undergarments when in the presence of an employee, masseur or masseuse. Any contact with a patron's genital area is strictly prohibited.
- (10) *Supply of clean sheets and towels.* All permitted 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 an approved, sanitary manner.
- (11) *Cleaning maintenance.* 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 1978, § 21-73; Ord. No. 7953, § 1, 9-9-14)

Sec. 26-72. - Supervision.

A permittee shall have the premises supervised at all times when open for business. 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 permittee shall personally supervise the business, and shall not violate or permit others to violate, any applicable provision of this article. The violation of any such provision by any agent or employee of the permittee shall constitute a violation by the permittee.

(Code 1978, § 21-74)

Sec. 26-73. - Employee and patron registers.

- (a) All operators permitted under the provisions of this article shall keep and maintain on their premises a current register of all their employees showing such employee's name, address and permit 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 permitted establishment shall keep a daily register, approved as to form by the police department, of all patrons, with names, addresses and hours of

arrival and, if applicable, the rooms or cubicles assigned. Such 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.

(Code 1978, § 21-75)

Sec. 26-74. - Persons under age 18 prohibited on premises.

No person shall permit any person under the age of 18 years to come or remain on the premises of any permitted business establishment as masseur, employee or patron, unless such person is on the premises on lawful business.

(Code 1978, § 21-76)

Sec. 26-75. - Advertising.

No establishment granted a permit under the provisions of this article 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 26-67, or that employees, masseurs or masseuses are dressed in any manner other than as described in section 26-71, nor shall any establishment indicate in the text of such advertising that any service is available other than those services described in section 26-67.

(Code 1978, § 21-77)

Sec. 26-76. - Restriction of business to premises.

All business or activity provided for under this article shall be conducted and performed on the respective premises; provided, however, that bathhouse or massage shop permittees or employees at the direction of a duly licensed physician may perform their services in behalf of physically incapacitated patients in such patient's home, residence or other designated place, or such permittee or employee may render treatment to persons who are bedfast or are so physically incapacitated that it is impractical to provide such treatment to such persons at a permitted location, and provided further that all such services so rendered shall have received the prior approval of the chief of police or health director or their authorized representatives.

(Code 1978, § 21-82)

Sec. 26-77. - 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 1978, § 21-80; Ord. No. 7394, § 1, 11-24-98)

Sec. 26-78. - Applicability of article to existing businesses.

The operators of any existing massage establishment, bathhouse, modeling studio or body painting studio are required to comply with all provisions of this article within 90 days of the effective date of the ordinance from which this article is derived.

(Code 1978, § 21-79(a))

Sec. 26-79. - Further regulations.

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

(Code 1978, § 21-81)

Secs. 26-80—26-90. - Reserved.

DIVISION 2. - BUSINESS PERMIT

Sec. 26-91. - Required.

No person shall operate a bathhouse, massage establishment, body painting studio or modeling studio without first having obtained a permit therefor issued by the governing body of this city. A separate permit shall be required for each and every separate place of business conducted by any one permittee, and the permit shall be valid only from January 1 to December 31 of each calendar year.

(Code 1978, § 21-61)

Sec. 26-92. - Application; fees.

- (a) Every applicant for a permit to maintain, operate or conduct any such establishment shall file an application with the city clerk and pay an annual filing fee as set out in appendix F, which shall not be refundable or prorated.
- (b) The application for a permit to operate an establishment under this article 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 requirements of this section, any applicant for a massage establishment permit shall furnish the following information:
 - (1) Written proof that the applicant is at least 18 years old.
 - (2) Business, occupation or employment of the applicant for the three years immediately preceding the date of application.
 - (3) The massage, bathhouse, modeling studio, and body painting studio 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 of the applicant subsequent to such action of suspension or revocation.
 - (4) Any criminal convictions, except minor traffic violations, fully disclosing the jurisdiction in which convicted and the offense for which convicted and the circumstances thereof.

- (5) 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 permit.

(Code 1978, § 21-63; Ord. No. 7086, § 1, 2-25-92; Ord. No. 7986, § 1, 12-8-15)

Sec. 26-93. - Facilities necessary.

- (a) No permit to conduct a massage establishment, bathhouse, modeling studio or body painting studio shall be issued unless an inspection by the health director or his 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 any cubicle, room, booth, or any area within any permitted establishment which is fitted with a door capable of being locked.
 - (2) 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. A single water closet per sex shall be provided for each 20 or more employees or patrons of that sex 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 sex 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 health director 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 chief of police. Provided, however, 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.

(Code 1978, § 21-71)

Sec. 26-94. - Issuance of business permit; display.

- (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 permit for a massage establishment, bathhouse, modeling studio or body painting studio, unless the governing body finds that:
 - (1) The correct permit fee has not been tendered to the city, 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 city's building, zoning and health regulations;
 - (3) The applicant, if an individual; 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 has been convicted of any crime which would make any person ineligible to receive a permit under this article, unless such conviction occurred at least five years prior to the date of the application;

- (4) The applicant has knowingly made any false, misleading or fraudulent statement of fact in the permit application or in any document required by the city in conjunction therewith;
 - (5) The applicant has had a massage establishment, bathhouse, body painting studio, modeling studio 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 18 years; or
 - (7) The manager or other person principally in charge of the operation of the business would be ineligible to receive a permit under the provisions of this article.
- (b) Any permit issued under the provisions of this article shall at all times be displayed by the permittee in an open and conspicuous place on the premises where the permitted business is conducted.

(Code 1978, § 21-67)

Sec. 26-95. - Transfer of permits.

No massage business, bathhouse, modeling studio or body painting studio permits are transferable, separate or divisible, and such authority as a permit confers shall be conferred only on the permittee named therein.

(Code 1978, § 21-78(a))

Sec. 26-96. - Revocation or suspension of business permit.

- (a) Any permit issued for a massage establishment, bathhouse, modeling studio or body painting studio 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 article are violated or where the permittee or any employee of the permittee, including a masseur or masseuse, has been convicted of any offense found in sections 26-94 and 26-109 and the permittee has actual or constructive knowledge of the violation or conviction, or in any case where the permittee or licensee refuses to permit any duly authorized police officer or health inspector of the city to inspect the premises or the operations therein.
- (b) The governing body, before revoking or suspending any permit under this article, shall give the permittee 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 permittee may present evidence bearing upon the question. In such cases, the charges shall be specific and in writing.

(Code 1978, § 21-69)

Secs. 26-97—26-105. - Reserved.

DIVISION 3. - EMPLOYEE PERMIT

Sec. 26-106. - Required.

No person shall be employed as an attendant, masseur, masseuse, model or as an employee of any kind in any establishment subject to the provisions of this article, unless he has a valid employee's permit issued by the city pursuant to the provisions of this division.

(Code 1978, § 21-62)

Sec. 26-107. - Application; fees.

- (a) Any person employed to perform any services in a massage establishment, bathhouse, modeling studio or body painting studio shall file a written application with the chief of police and pay an annual filing fee to the city clerk as set out in appendix F, which fee shall not be refundable or prorated.
- (b) The application for an employee permit shall contain the following:
 - (1) Name, address and telephone number.
 - (2) Two portrait photographs at least two inches by two inches.
 - (3) Applicant's weight, height, color of hair and eyes, and fingerprints.
 - (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.
 - (8) A statement in writing from a licensed physician in the state that he has examined the applicant and believes the applicant to be free of all communicable diseases.
 - (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 and the qualifications of the applicant for the permit.

(Code 1978, § 21-64; Ord. No. 7086, § 1, 2-25-92)

Sec. 26-108. - Education requirements, masseur or masseuse.

- (a) Any person, including an applicant for a massage establishment permit, who engages or intends to engage in the practice of massage shall, upon making application for a permit, supply the name and address of the recognized school attended, the date attended, and a copy of the diploma or certificate of graduation awarded the applicant showing the applicant has successfully completed not less than 70 hours of instruction in the theory, method or practice of massage.
- (b) Applicants for a masseur or masseuse permit may substitute one years' continuous experience as a masseur or masseuse in lieu of the requirement of a diploma or certificate of graduation from a recognized school or other institution of learning wherein the method and work of massage is taught. Such masseur or masseuse must obtain an affidavit attesting to such experience from the owner of the establishment where the continuous year of experience occurred.

(Code 1978, §§ 21-65, 21-79(b))

Sec. 26-109. - Issuance.

The chief of police shall issue an employee permit under this division within 21 days following application therefor, unless he finds that:

- (1) The applicant for the employee permit has been convicted of:
 - a. A felony;
 - b. An offense involving sexual misconduct with children;
 - c. Obscenity, keeping or residing in a house of ill fame, solicitation of a lewd or unlawful act, prostitution, or pandering;
- (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 city in conjunction therewith;
- (3) The correct permit fee has not been tendered to the city, and in the case of a check or bank draft, honored with payment presentation; or
- (4) In the case of a masseur or masseuse, that the applicant has not successfully completed a resident course of study or learning from a recognized school as required under the provisions of this article.

(Code 1978, § 21-68)

Sec. 26-110. - Transfer of permits.

No employee permits issued under the terms of this division are transferable, separate or divisible, and such authority as a permit confers shall be conferred only on the permittee named therein.

(Code 1978, § 21-78(a))

Sec. 26-111. - Revocation of employee permit.

- (a) An employee permit issued by the chief of police shall be revoked or suspended after a public hearing before the chief of police, or his designated representative, where it appears that the employee has been convicted of any offense enumerated in section 26-109.
- (b) The chief of police, 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 chief of police or his designated representative, at which hearing the relevant facts regarding the occurrence of the conviction shall be determined.

(Code 1978, § 21-70)

Secs. 26-112—26-175. - Reserved.

City Code Chapter	Applicable Section	Description	Effective Timeline	Requirements	Fee
26	BUSINESSES				
26	26	Special Use Permit Annual License	Mar 1 - Feb 28	Annual license fee for approved special use permits	\$25.00
26	92	Massage Establishments, Bathhouses, Modeling Studios, Tattoo Establishments and Body Painting Studios:			
26	92	Business Permit	Jan 1 - Dec 31	Initial Fee	\$350.00
26	92	Business Permit Renewal	Jan 1 - Dec 31	Renewal Fee	\$175.00
26	107	Employee Permit	Jan 1 - Dec 31	Employee Fee	\$50.00
26	187	Auction License	Daily	New goods public auctions	\$30.00
26	187	Auctioneer License	Daily	Auctioneers, other than those conducting new goods public auctions	\$30.00
26	187	Auctioneer License	Mar 1 - Feb 28	Auctioneers, other than those conducting new goods public auctions	\$150.00
26	211	Bill Posters, Distributors and Painters	Daily	Per Person	\$10.00
26	211	Bill Posters, Distributors and Painters	Weekly	Per Person	\$40.00
26	211	Bill Posters, Distributors and Painters	Monthly	Per Person	\$100.00
26	211	Bill Posters, Distributors and Painters	Mar 1 - Feb 28	Per Person Annual	\$250.00
26	266	Adult Entertainment Businesses:			
26	266	Adult entertainment business license	Annual	Business license	\$650.00
26	266	Adult entertainment manager's license	Annual	Manager's license	\$65.00
26	266	Adult entertainer's license	Annual	Entertainer's license	\$26.00
26	266	Adult entertainment service license	Annual	Service license	\$26.00



New \$ 50.00 **Renewal \$ 50.00** Date: _____

The undersigned hereby makes application for license to operate as a massage/tattoo establishment in the City of Leavenworth, Kansas under the provisions of the Code of Ordinances, Chapter 26 (businesses).

Applicant's Name: _____

Residence Address: _____ City: _____ State: _____ Zip: _____

Age _____ Weight _____ Height _____ Color of Hair _____ Eyes _____ Female Male

Daytime Phone: _____ Driver's License #: _____

Employed by: _____

Address: _____ Business Phone #: _____

Position Held: _____

List employment experience in last three (3) years pertaining to this application.

Name of Business: _____

Address: _____ Phone Number: _____

Position Held: _____ Dates: _____

Supervisor's Name (if applicable): _____

Name of Business: _____

Address: _____ Phone Number: _____

Position Held: _____ Dates: _____

Supervisor's Name (if applicable): _____

Have you ever been convicted of any crime other than minor traffic violations? If so, please provide the place and court in which the conviction was obtained and the sentence imposed as a result of such conviction. _____

Supply the name and address of the recognized school attended, the date attended, and a **copy of the diploma or certificate of graduation awarded the applicant showing the applicant has successfully completed not less than 70 hours of instruction** in the theory, method or practice of massage. Applicants for a masseur or masseuse permit may substitute one years' continuous experience as a masseur or masseuse in lieu of the requirement of a diploma or certificate of graduation from a recognized school or other institution of learning wherein the method and work of massage is taught. Such masseur or masseuse must obtain an affidavit attesting to such experience from the owner of the establishment where the continuous year of experience occurred.

Provide a statement in writing from a licensed physician in the state that he has **"examined the applicant and believes the applicant to be free of all communicable diseases"**.

I hereby certify that the above and foregoing information is true and correct. I have personal knowledge of the information contained in this application and that I have the provisions of the chapter regulating massage establishments. I agree to display my license in an open and conspicuous location on the premises. I acknowledge this license, once issued, is not transferable nor is the fee refundable should the application be denied. I acknowledge failure to provide all information and documentation required shall constitute an incomplete application, which shall not be processed. I do hereby freely and voluntarily give my consent and permission for the agents and employees of the City of Leavenworth, Kansas, to seek and obtain information and to conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the license. I also freely and voluntarily give my permission for former employees and other persons to release any information to any authorized person conducting the background investigation of my application.

Applicant's Signature: _____ Date: _____

MASSAGE / TATTOO LICENSE EXPIRE DECEMBER 31ST OF EACH YEAR

FOR OFFICE USE ONLY

Two- 2"X2" headshot photos Proof of ID Certificate from licensed physician (New) Applicant Fingerprints

Approved Disapprove the issuance of license to the above named applicant by the Police Chief or his designee

Date: _____ PD Signature: _____

Massage Employee (MT/MS1) Tattoo Employee (MT/TAT1) Permit # _____ Print & Laminate License

Business License Acct.#: _____ Bill #: _____

Date: _____ City Clerk's Office Staff Received by: _____

26-107

ARTICLE 10. MASSAGE THERAPY**5-1001. Definitions.**

(a) **Accredited School:** Any school or institute of learning which is accredited by the State Board of Education or equivalent and approved by any state massage specific license organization. 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 Article.

(b) **Business premises:** 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.

(c) **Employee:** Refers to any person, other than massage therapists, who renders any service to a licensee under this Article, who receives compensation from the licensee or patron.

(d) **Establishment Applicant:** Refers to any individual, who applies as an individual or a group of individuals; each stockholder who holds more than ten (10) percent of the stock of the corporation and each officer and director, if the application is a corporation; each partner, to include limited partners, if the applicant is a partnership.

(e) **Establishment Representative:** An employee, manager, independent contractor, unpaid volunteer or anyone who works at or on behalf of a massage establishment.

(f) **Healing Arts Practitioner:** Defined by the provisions of K.S.A. 65-2801, et. seq. and refers to a license issued to practice medicine and surgery, osteopathic medicine and surgery or chiropractic.

(g) **In-office massage therapy:** 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. The patron must be fully clothed.

(h) **In-office massage therapy establishment:** Any establishment having a place of business where any person, firm, partnership, association, or corporation engages in the activities mentioned in 5-1001 (f) for compensation.

(i) **Massage Therapy:** 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.

(j) **Massage therapy establishment:** Any establishment where any person, firm, partnership, association, or corporation engages in or carries on or permits to be engaged in or carries on any of the activities mentioned in 5-1001 (f) for compensation but does not include "in-office massage therapy establishments".

(k) **Massage therapy (therapeutic):** The practice of therapeutic massage as the application of various techniques to the muscular structure and soft tissues of the human body, as a healing art, strictly non-sexual, requiring proof of education, training or education from an institution or business with accreditation recognized by the State, or as an apprentice to a licensed therapeutic massage therapist.

(l) **Massage therapist:** Any person who, for any consideration whatsoever, engages in the practice of massage as herein defined.

(m) **Patron:** Any person who utilizes or receives the services of any establishment subject to the provisions of this Article and under such circumstances that it is reasonably expected that he or she will pay money or give any other consideration therefore, provided a person under the age of 18 may utilize or receive massage therapy from a licensed massage therapist only if accompanied by a parent or legal guardian and a parent or legal guardian has authorized such therapy in writing.

5-1002. Reference to Chief of Police, Other Staff.

Any reference in this Article to the Chief of Police, City Clerk, Planning Director, Building Official, Code Enforcement Officer or Fire Chief shall include those persons, designees and any individuals designated by the City Manager.

5-1003. Business License Required.

No person, firm, partnership, association or corporation shall operate an in-office massage therapy establishment and/or massage establishment, as defined herein, without first having obtained a business license therefor, issued by the Governing Body of this 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 shall be valid for a period of twelve (12) months from the date of issuance; provided individuals conducting in-office massage therapy as defined by this Article shall be required to hold only one (1) permit; and provided further that individuals conducting massage therapy 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 therapy establishment conducted on permanent premises.

5-1004. 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 non-permanent office premises of the licensee's clients and specifically does not include the authority to conduct massage therapy at a permanent premises operated by the licensee; provided, the licensee must have a permanent business office located within the City. If the licensee desires to conduct massage therapy both on the non-permanent office premise of the licensee clients and a permanent premises operated by the licensee, the applicant must obtain a separate license for in-office massage therapy establishment and a massage establishment license by submitting separate applications for each, provided only one (1) license fee shall be charged for both applications.

5-1005. Massage Therapist License Required, Categories, Educational Requirements, Renewal & Restrictions.

No person shall perform massage therapy or in-office massage therapy within the City, unless he or she has a valid massage therapist license issued by the City pursuant to the provisions of this Article. 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.

(a) The massage therapist license and educational requirements shall be as follows:

(1) Massage Therapist. To be eligible for issuance of a Massage Therapist license, an applicant must provide proof of completion of:

(A) Successful completion of a course of instruction of not less than 500 hours, in the theory, method or practice of massage from one or more accredited schools. All practical and/or modality instruction must be completed as in-classroom/hands-on instruction, while theory instruction may be completed online. 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.

(B) Proof of successful passage of the Board Certification exam administered by the National Certification Examination for Therapeutic Massage and Bodywork. 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.

(b) Proof of completion of educational and training requirements must be by certified transcripts. The educational and training requirements required by this Article may be received from more than one school. An hour of instruction is defined as fifty minutes of actual instructional time.

(c) All applicants for renewal of a massage therapist license in any category must provide proof of recertification in American Red Cross first aid and American Heart Association CPR or the equivalent thereof prior to the approval of any renewal.

(d) All licensed massage therapists who apply for a renewal license must show proof that they received a minimum of twelve hours (fifty minutes per hour) of professional massage continuing education in the preceding twelve-month period. One hour continuing education credit will be awarded for each hour attendance at programs that relate 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 City Clerk.

(e) Massage therapists shall notify the City of any change in employment within thirty (30) calendar days of the change to include a change in the therapist's employer or the addition or reduction of locations they perform massage therapy.

5-1006. Application for Massage Therapy Establishment and In-Office Massage Therapy Establishment Business License; Fees.

Every applicant for a business license to maintain, operate or conduct any establishment covered by this Article shall file an application with the City Clerk and pay an annual fee, as approved by the City Council, to the City Clerk, which shall not be refundable and an annual renewal fee as approved by the City Council. Sole practitioners who own and operate an establishment and are the only massage therapist on the premises will only be required to pay the annual massage therapy establishment and/or in-office massage therapy establishment business license fee.

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 and the name, address, and telephone number of each applicant.

In addition, any applicant for a business license shall furnish the following information:

- (a) Written proof that the applicant and/or manager is at least 18 years old.
- (b) Two portrait photographs at least two (2) inches by two (2) 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 locations and contact information for each applicant and manager for the three (3) years immediately prior to the date of application.
- (d) The massage therapy and in-office massage therapy establishment business license history of the applicant and managers; 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, the reason therefore, and the business activity or occupation subsequent to such action of suspension or revocation.
- (e) Proof that managers successfully completed an in-person (not online) certification program in American Heart Association CPR and American Red Cross first aid or equivalent in-person programs and provide current proof of certification.
- (f) Any criminal convictions, except minor traffic violations, fully disclosing the jurisdiction in which convicted and the offense for which convicted and circumstances thereof.
- (g) In the case of applicants who intend personally to provide in-office massage therapy or massage therapy, the applicant must also apply for and receive a massage therapist license as provided for in Section 5-1007.
- (h) 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 establishment applicant for the license and the managers to work in a massage establishment.
- (i) Applicants for renewal of an existing license need provide only that information or documentation necessary to insure up-to-date renewal application processing.

5-1007. Application for Massage Therapist License; Fees.

Any person who desires to perform or provide massage therapy or in-office massage therapy or to perform any massage services in a massage therapy establishment, as defined herein, shall file a written application with the City Clerk and pay a fee as approved by the City Council to the City Clerk for the first application, which shall not be refundable and an annual renewal fee as approved by the City Council. A massage therapist license shall be valid for a period of twelve (12) months from the date of issuance. This fee shall cover the cost to process 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 Article. Sole practitioners (who own and operate an establishment and are the only massage therapist on the premises), apply for a massage therapist license of any type and have successfully obtained a massage therapy establishment license or in office massage therapy license are exempt from paying the massage therapist license fee.

The application for a massage therapist license shall contain the following:

- (a) Name, address and telephone number.

(b) Two portrait photographs at least two inches by two inches and a copy of a valid government issued identification card issued by the State of Kansas or Missouri.

(c) Applicant's weight, height, color of hair and eyes and fingerprints, provided once an applicant submitted fingerprints, they shall not be required to submit new fingerprints for any renewal application for that person.

(d) Written evidence that the applicant is at least 18 years old.

(e) Business, occupation, or employment of the applicant for the three (3) years immediately prior to the date of application.

(f) Disclosure of any criminal convictions or diversions, except minor traffic violations, and fully disclose the jurisdiction in which convicted or diverted and the offense for which convicted or diverted.

(g) The position or function the applicant will perform services within each location establishment. (If applicable).

(h) 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.

(i) Proof of the education and experience requirements set forth at 5-1005 herein.

(j) Copy of valid government issued identification card issued by the State of Kansas or Missouri.

(k) History of the applicant, whether such person, in operation in Kansas or another state under an establishment license, a therapist license or under another name had such license revoked or suspended and the reason therefor.

5-1008. Massage Therapy Establishment and In-Office Massage Therapy Establishment Business License Application Processing.

Upon receipt of a complete application for a "massage therapy establishment business license," the City Clerk shall immediately transmit one copy of the application to the Chief of Police for investigation of the application, which will include a background check. In addition, the City Clerk shall transmit a copy of the application to the Planning Director, Building Official, Code Enforcement Officer and Fire Chief, as applicable. 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. The Chief of Police shall report the results of the investigation to the City Clerk not later than ten (10) working days from the date the application is received by the City Clerk. It shall be the duty of the Planning Director, Building Official, Code Enforcement Officer and Fire Chief 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 City, provided the premises need not be designed or set up for the requirements of a license being issued, provided further, all other code and zoning requirements must be met. All standards for premises set forth in 5-1016 must be met prior to the first day the premises opens for business. The Planning Director, Building Official, Code Enforcement Officer and Fire Chief shall report the results of their investigation to the City Clerk not later than ten (10) working days from the date the application is received by the City Clerk. Upon receipt of the reports from the Chief of Police, Planning Director, Building Official, Code Enforcement Officer and Fire Chief, the City Clerk shall schedule the application for consideration by the Governing Body

at the earliest meeting consistent with the notification requirements established by law, provided the license application shall be approved or disapproved within 45 days from the date filed with the Clerk's office. The applicant shall be notified of the date when the Governing Body will consider the application, at which time the applicant will be afforded an opportunity to be heard. If there exist inspection items that relate to the structural design of the premises that cannot be verified prior to consideration of the application by the Governing Body, the Governing Body may approve the application and a license issued contingent upon satisfactory resolution of any such items.

5-1009. Identification Cards.

All massage business establishment owners, managers or massage therapists issued a license pursuant to the provisions of this Article shall, at all times when working in an establishment or providing any service regulated by this Article, have in their possession a valid identification card issued by the City to include the massage therapist's license number, physical description and a photograph. Such identification cards shall be laminated to prevent alteration. Provided, that all persons granted licenses under this Article shall at all times keep their licenses available for inspection upon request of any person who by law may inspect same. Provided further that all licensees shall, when conducting in-office massage therapy or massage therapy off their business premises, wear on their clothing in a conspicuous location their identification card.

5-1010. Issuance of Massage Therapy Establishment Business License.

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

(a) The correct license fee was not tendered to the City, and, in the case of a check or bank draft, honored with payment upon presentation;

(b) The establishment operation, as proposed by the applicant, if permitted, would not comply with all applicable laws to include, but not limited to, the City's building, zoning and health regulations;

(c) The applicant, if an individual, or any of the stockholders who holds 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, to include 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 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 as defined by K.S.A. 21-3513;
- (6) solicitation of a lewd or unlawful act;
- (7) prostitution;

- (8) pandering or other sexually related offense;
 - (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 preceding the date of the application.
- (d) The applicant 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 or manager has had a massage therapy establishment or other similar permit or license denied, revoked, 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 ten (10) years prior to the date of the 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) The applicant, if an individual, or any of the officers and directors, if the applicant is a corporation; or any of the partners, to include 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; and
- (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 Article.

The record of the Governing Body shall show the action taken on the application, and if the license is granted, the Governing Body shall direct the City Clerk to issue the proper license. The license shall state that it is not transferable or refundable. The license shall be kept posted in an open and conspicuous place on the premises of the licensee. 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 disapproval. Any applicant aggrieved by the disapproval may seek judicial review to the Wyandotte County District Court as provided by law. Upon denial, any establishment applicant shall be ineligible to reapply for any license under this Article for a period of one year from the date of denial.

5-1011. Application Process and Issuance of Massage Therapist License.

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 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 as defined by K.S.A. 21-3513;

- (6) solicitation of a lewd or unlawful act;
- (7) prostitution;
- (8) pandering or other sexually related offense;
- (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 preceding the date of the application.

(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) The applicant had a massage establishment or therapist permit or license denied, revoked or suspended or involuntarily surrendered the permit or license in lieu of revocation or suspension by the City or any other state or local agency within ten (10) year prior to the date of application.

(d) The applicant was issued a license for an adult entertainment business or escort service or was employed by any such establishment within ten (10) year prior to the date of application.

(e) The applicant has not attained the age of 18 years.

(f) 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;

(g) That the applicant has not successfully completed the education standards required under the provisions of this Article.

The record of the Governing Body shall show the action taken on the application, and if the license is granted, the Governing Body shall direct the City Clerk to issue the proper license. The license shall state that it is not transferable or refundable. The license shall be kept posted in an open and conspicuous place on the premises of the licensee. 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 disapproval. Any applicant aggrieved by the disapproval may seek judicial review to the Wyandotte County District Court as provided by law. Upon denial, any establishment applicant shall be ineligible to reapply for any license under this Article for a period of one year from the date of denial.

5-1012. Revocation or Suspension of Business License.

(a) Any business license issued for an in-office massage therapy establishment or a massage therapy establishment may be suspended or revoked by the City Clerk for a violation of any of the provisions of this Article or the licensee or any establishment representative was 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 to conduct any investigation or inspection provided for in this Article.

(b) Written notice shall be sent to the person entitled to notice as stated in the business license and at the location specified in the license for notice. This notice shall state the specific basis for suspension or revocation and shall notify the licensee of the licensee's right to a hearing before the Governing Body to appeal the suspension or revocation. Any of the following shall establish a sufficient basis for suspension or revocation of the business license, if a licensee, its employee, or agent:

- (1) Is convicted of any offense which is a felony, the record of conviction being conclusive evidence thereof.
- (2) Supplies false information to the permit administrator or Police on the application for licensure or licensure renewal.
- (3) Allows the use of his or her establishment by an unlicensed person.
- (4) Violates any zoning, building or fire prevention ordinance.
- (5) Uses fraudulent, false, misleading or deceptive advertising to describe, promote or advertise any type of business activity or service which is expressly not massage therapy or has otherwise fraudulently engaged in massage therapy.
- (6) Has been convicted, to include a massage therapist, of any offense found in 5-1011 and 5-1012 herein and the licensee has actual or constructive knowledge of the violation or conviction.
- (7) Conducts or allows to be conducted any other business enterprise in the establishment.
- (8) Conducts any illegal activities or allows them to be conducted by anyone else.
- (9) Has an arrest record for any sexual offense or violation.
- (10) Has fraudulently obtained a license pursuant to the provisions of this ordinance.
- (11) Has ceased to meet any of the requirements for issuance of a massage therapy license or massage therapy establishment license.
- (12) Refuses to permit any duly authorized police officer or employee of the City to inspect the premises or the operations of the licensee.
- (13) Fails to comply with all applicable laws and regulatory provisions herein.

(c) Business Closed and Posted. Upon suspension or revocation of the business license, the business shall cease to operate and City officials shall post the business as closed.

(d) Appeal. Upon receipt of a written request delivered to the City Clerk, an appeal of the suspension or revocation shall be heard by the Governing Body within thirty (30) days of the suspension or revocation. The licensee may submit evidence at the hearing which is relevant and material to the specific basis for suspension or revocation. The Governing Body shall make a final determination as to suspension or revocation. A licensee aggrieved by the decision of the Governing Body may appeal the decision to the Wyandotte County District Court as provided by law.

5-1013. Revocation of Massage Therapist License.

(a) Any Massage Therapist license issued for a massage therapist may be suspended or revoked by the City Clerk for a violation of any of the provisions of this Article or the licensee or any establishment representative was 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 to conduct any investigation or inspection provided for in this Article.

(b) Written notice shall be sent to the person entitled to notice as stated in the Massage Therapist license and at the location specified in the license for notice. This notice shall state the specific basis for suspension or revocation, and shall notify the licensee of the licensee's right to a hearing before the Governing Body to appeal the suspension or revocation. Any of the following shall establish a sufficient basis for suspension or revocation of the Massage Therapist license, if a licensee:

- (1) Is convicted of any offense which is a felony, the record of conviction being conclusive evidence thereof.
- (2) Supplies false information to the permit administrator or Police on the application for licensure or licensure renewal.
- (3) Uses fraudulent, false, misleading or deceptive advertising to describe, promote or advertise any type of business activity or service which is expressly not massage therapy or has otherwise fraudulently engaged in massage therapy.
- (4) Convicted of any offense found in 5-1011 and 5-1012 herein.
- (5) Conducts any other business enterprise in the establishment.
- (6) Conducts any illegal activities.
- (7) Has an arrest record for any sexual offense or violation.
- (8) Has fraudulently obtained a license pursuant to the provisions of this ordinance.
- (9) Has ceased to meet any of the requirements for issuance of a massage therapy license.
- (10) Refuses to permit any duly authorized police officer or employee of the City to inspect the records of the operations of the licensee.
- (11) Fails to comply with all applicable laws and regulatory provisions herein.

(c) Upon suspension or revocation of the Massage Therapist license, the Massage Therapist shall cease to operate in the City of Bonner Springs.

(d) Appeal. Upon receipt of a written request delivered to the City Clerk, an appeal of the suspension or revocation shall be heard by the Governing Body within thirty (30) days of the suspension or revocation. The licensee may submit evidence at the hearing which is relevant and material to the specific basis for suspension or revocation. The Governing Body shall make a final determination as to suspension or revocation. A licensee aggrieved by the decision of the Governing Body may appeal the decision to the Wyandotte County District Court as provided by law.

5-1014. Inspection Necessary.

No business shall be conducted on licensed premises unless an inspection by the Building Official or an 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 that can be locked. These provisions are not applicable to an in-office massage therapy establishment.

(b) Toilet facilities shall be provided in convenient locations. When five (5) or more massage establishment employees and patrons of different sexes are on the premises at the same time, separate toilet facilities shall be provided. These provisions are not applicable to an in-office massage therapy establishment.

(c) Lavatories or wash basins provided with both hot and cold 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 therapy establishment.

(d) At least one water fountain, water cooler or bottled water shall be provided but shall not be located in toilet rooms or bathrooms.

The Building Official 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 that relates to the maintenance of premises, nor to preclude authorized inspection thereof.

5-1015. Inspections, Immediate Right of Entry.

The Police Department and Building Official 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 and areas where a therapist performs massage therapy, to determine that the provisions of this Article are complied with. Such inspections shall be made at reasonable times and in a reasonable manner. It shall be unlawful for any licensee, manager or representative 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, manager or representative to grant immediate access to such inspector shall be grounds for the revocation or suspension of any business or employee license.

5-1016. Operation Regulations.

The operation of any in-office massage therapy establishment or massage therapy establishment, to include the provision of service by massage therapists, 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 therapy may be extended for in-office therapy conducted on premises with established evening and night shifts.

(b) 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. This provision is not applicable to in-office massage therapy establishments.

(c) Danger to safety, health. No service shall be given which is clearly dangerous or harmful in the opinion of the Building Official, Property Maintenance Officer or Fire Chief to the safety or health of any person, and after such notice in writing has been delivered to the licensee from such director.

(d) 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 Article or during in-office massage therapy. 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.

(e) Conduct of premises. All licensees licensed under the provisions of this Article 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 Article. 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.

(f) Every portion of a licensed establishment to include appliances and personnel shall be kept clean and operated in a sanitary condition.

(g) All licensees and representatives shall be clean and wear clean, modest outer garments. On all premises except in-office massage therapy establishments, 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.

(h) 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.

(i) 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.

(j) 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.

(k) Wet and dry heat rooms, shower compartments and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs or individual soak areas shall be thoroughly cleaned after each use.

(l) Table showers are strictly prohibited.

(m) No individual shall reside, inhabit or otherwise sleep overnight at an establishment with the exception of the licensee who operates an establishment in his/her home or residence but shall not reside, inhabit or sleep in the portion of the home or residence devoted to the practice of massage therapy.

5-1017. Supervision.

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

5-1018. Employee and Patron Registers.

(a) All establishments licensed under the provisions of this Article shall keep and maintain on their premises a current register of all their establishment representatives and list 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 Police Department.

(b) Every person who engages in or conducts a licensed establishment shall keep a daily register of services provided and all patrons, with names, addresses, and hours of arrival and, if applicable, the rooms or cubicles assigned. Said daily register shall at all times during business hours be subject to inspection by City officials and by the Police Department and shall be kept on file for one (1) year.

5-1019. 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 licensed massage therapist if accompanied by a parent or legal guardian and a parent or legal guardian authorized such therapy in writing.

5-1020. Advertising.

No establishment granted a license under provisions of this Article 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 5-1001, or that employees or massage therapists are dressed in any manner other than described in 5-1016.

5-1021. Transfer of Licenses; Other Licenses and Fees.

(a) No massage therapy establishment or in-office massage therapy establishment, or massage therapist licenses are transferable and such authority as a license shall be conferred only on the licensee named therein.

(b) Any applications made, fees paid, and licenses obtained under the provisions of this Article 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.

5-1022. Applicability to Existing Businesses.

The operators of any existing massage therapy establishment or in-office massage therapy establishment must comply with all provisions of this Article, subject to the educational and experience requirements set forth in Section 5-1005.

5-1023. Exceptions.

The provisions of this Article 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 Article 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.

5-1024. Further Regulations.

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

5-1025. Restriction of Business to Premises.

(a) All massage therapy (not to include in-office massage therapy) provided for under this Article shall be conducted on the premises of a licensed massage therapy establishment, provided massage therapy may be conducted in a private residence under the following conditions:

- (1) If done at the direction of a licensed healing arts practitioner, or
- (2) If done at the written request of a person that shall provide the name and address of the requesting person, the date and time of the service, and the fees charged for the service. When private residence massage therapy is offered, whether by telephone, in person or in writing, the person offering such service must state clearly that they are a licensed massage therapist or that the service will be performed by a licensed massage therapist and that prior to any service being provided the person requesting the service will be required to sign a form requesting the service. All such written requests shall be kept by the licensed massage therapy establishment for a period of one (1) year and shall be produced for inspection when requested by any City official. Private residence massage therapy shall not be conducted between the hours of 10:00 p.m. and 9:00 a.m.

(b) All license massage therapy establishments shall be operated from a commercial business premise or shall be allowed by Special Use Permit in R-1 and R-1A residential zoning districts upon review and recommendation by the Planning Commission and approval by the Governing Body. Sole practitioners (therapists who work alone), are required to have both a massage therapist license and massage therapy establishment license and may work from a commercial business premise or private home, residence or non-commercial business establishment. (Ord. 2158, 1-2007)

(c) Massage therapy is permitted in the guest rooms of hotels and bed and breakfast establishments upon written approval of the hotel and bed and breakfast owners and/or managers. (Ord. 2393)

TITLE 2 BUSINESS REGULATIONS, LICENSE TAXES AND FEES

CHAPTER 2-3 MASSAGE THERAPY AND LICENSING REQUIREMENTS

Article 2-3-A MASSAGE ESTABLISHMENT LICENSING AND OPERATIONS

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 MASSAGE 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

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 massage 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 massage 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 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.
- 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

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

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.

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TITLE 2 BUSINESS REGULATIONS, LICENSE TAXES AND FEES

CHAPTER 2-4 ENTERTAINMENT REGULATIONS

* See Section 4-1-B-23 of this Code for supplementary zoning regulations; see Section 4-1-G-6 of this Code for special use permit criteria.

Article 2-4-A GENERAL REGULATIONS AND REQUIREMENTS

Section 2-4-A-2 GENERAL REGULATIONS AND REQUIREMENTS.

- A. **Age Restriction:** Only adults as defined in Article C of this Chapter, shall be permitted on the premises of any adult business establishment. If alcoholic or cereal malt beverages are sold or served on the premises, only persons twenty one (21) years of age or older may be permitted on the premises.
- B. **Hours Of Operation:** It shall be unlawful for any adult business establishment to be conducted, operated or otherwise open to the public, customers or members between the hours of twelve o'clock (12:00) midnight and eleven o'clock (11:00) A.M. No adult business establishment shall be open on any Sunday.
- C. **Exterior Display:** The premises of all adult business establishments shall be so constructed as to ensure that 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 exterior doorways must be constructed with an anteroom or foyer so as to prevent observation of the interior of the premises from the exterior of the building.
- D. **Nudity Prohibited:**
 - 1. No employee, entertainer or customer in an adult business establishment shall be unclothed, nude or in such less than opaque and complete attire, costume or clothing, so as to expose to view any "specified anatomical area" except when such employee is separated from any and all customers by a protective barrier.
 - 2. No business licensed to sell or offer for consumption on the premises alcoholic liquor or cereal malt beverage* shall permit any person to appear live or depicted in film or pictures on the licensed premises in a state of nudity.
See Chapter 6 of this Title for liquor and cereal malt beverage regulations.
- E. **Protective Barrier Required:** Any adult business establishment engaging in the display or performance of live models, dancers, entertainers or other performers in an erotic manner, or which is otherwise intended to provide sexual stimulation or to appeal to arouse or excite the sexual desires or interests of patrons, shall erect a platform at least two feet (2') above the primary level of the customer floor level on which the employee or entertainer must be contained, shall not permit customers within ten feet (10') of the employee or entertainer and shall, in addition, erect a protective barrier from floor to

ceiling, of sufficient strength to prevent customers from entering the area of the employee or entertainer or touching the employee or entertainer in any manner. Further, it shall be unlawful for any customer to be upon any portion of the stage during a performance or for an owner, operator, or manager to permit a customer to be upon any portion of the stage during the performance.

- F. **Erotic Touching Prohibited:** No employee, dancer or entertainer of an adult business establishment shall be permitted to manually or through other bodily contact stimulate the genitals of any person with the intent to arouse or gratify the sexual desires of any other person whether or not such sexual or genital part of such other person is clothed, unclothed, covered or exposed. Likewise, no customer in an adult business establishment shall be permitted to manually or through other bodily contact stimulate the genitals of any person with the intent to arouse or gratify the sexual desires of any employee, dancer or performer, whether or not such sexual or genital part of such dancer or performer is clothed or unclothed, covered or exposed.*
See also Section 3-9-F-4 of this Code.
- G. **Display Or Performance:** No adult business establishment shall permit any employee, entertainer, model, dancer or other performer to participate in any entertainment, live display or performance which depicts, describes or simulates "specified sexual activities" or contains any acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.
- H. **Devices:** No employee, model, dancer, entertainer or other performer shall wear or use any device or covering exposed to view which simulates any "specified anatomical area", nor shall any employee, model, dancer, entertainer or other performer use artificial devices or inanimate objects to depict any of the prohibited activities described in this Article.
- I. **Entertainer Payment Or Gratuity:** No model, dancer, entertainer or other performer, while on the premises of an adult business establishment, shall solicit, demand or receive any payment or gratuity from any customer.
- J. **Lighting:** All adult business establishments shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than two (2) footcandles as measured at the floor level, and such illumination must be maintained at all times that any customer is present in or on the premises.
- K. **Outdoor Vending Machines Prohibited:** No coin- or token-operated vending machine which sells adult media may be located in a place open to the public, except that said machines are permitted in public places from which minors are excluded.
- L. **Closed Booths Or Rooms Prohibited:** The premises of all adult business establishments shall be physically arranged in such a manner that the entire interior portion of any booths, cubicles, rooms, or stalls is visible from a public common area of the premises.
1. Visibility shall not be blocked or obscured by doors, curtains, drapes, or any other obstruction whatsoever.
 2. The entire body of any viewing person must also be visible from the public, common area, without the assistance of mirrors or other viewing aids.
 3. No booth shall be occupied by more than one (1) customer at a time.
 4. No holes shall be permitted between booths or individual viewing areas.
- M. **Identification Cards:** Any adult business employee issued a permit by the City under the provisions contained herein shall, at all times when working in an adult business establishment, have in their possession a valid identification card issued by the City, bearing the permit number, the employee's physical description, and a photograph of such employee. Such identification card shall be laminated to prevent alteration.

- N. **Ventilation And Sanitation Requirements:** The premises of all adult business establishments shall be kept in a sanitary condition. Separate dressing rooms and restrooms for men and women shall at all times be maintained and kept in a sanitary condition.
- O. **Manager On Premises:**
1. A manager shall be on duty at all adult business establishments at all times the premises is open for business. The name of the manager on duty shall be prominently posted during business hours.
 2. It shall be the responsibility of the manager to verify that any person who provides adult entertainment or works as a server within any adult business establishment possess a current and valid permit and that the employees have possession of such permits at all times while working.
- P. **General Prohibitions:** No owner, operator, manager, or other person in charge of the premises of an adult business establishment shall:
1. Knowingly permit alcoholic liquor or cereal malt beverages to be brought upon the premises unless authorized to do so by a properly issued and current drinking establishment or cereal malt beverage license;
 2. Knowingly allow or permit the sale, distribution, delivery or consumption of any controlled substance or illegal drug or narcotic on the premises;
 3. Knowingly allow or permit any person under the age of eighteen (18) to be in or upon the premises of an adult business establishment;
 4. Knowingly allow or permit any act of prostitution or patronizing prostitution on the premises, as prohibited by State law or City ordinance;
 5. Knowingly allow or permit a violation of this Ordinance or any other City ordinance provision or State law; or
 6. Knowingly allow any entertainer, employee, manager, or operator to perform any work, service, or entertainment directly related to the operation of an unlicensed adult business.
- Q. **Facilities Necessary:** No adult business license to conduct a bathhouse or body painting studio shall be issued unless an inspection by the appropriate City official, or his/her authorized representative, reveals that the premises on which the applicant intends to conduct such business 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 or showers taken. Floors shall be free from any accumulation of dust, dirt, or refuse. All equipment used in the business' 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 (1) patron. Heavy, white paper may be substituted for sheets provided that such paper is changed for every patron. No activity related to an adult business 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.
 2. Toilet facilities shall be provided in convenient locations. A single water closet per sex shall be provided for each twenty (20) or more employees or patrons of that sex on the premises at any one (1) time. Urinals may be substituted for water closets after one (1) water closet has been provided. Toilets shall be designated as to the sex 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.

The appropriate City official shall certify that the proposed business establishment complies with all of the requirements of this Section. 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. The appropriate City official may recommend the issuance of a license contingent upon the compliance with any requirements in this Section.

Occupational Licenses

The City Clerk's Office is responsible for most occupational licenses required in Overland Park.

Applications and fees may be dropped off or mailed to the City Clerk's Office at City Hall, 8500 Santa Fe Drive, Overland Park, Kan. 66212.

Call 913-895-6150 or contact cityclerk@opkansas.org for more information.

Massage Establishment License

A license is required by any person, firm, partnership, association or corporation who wishes to operate a massage establishment in the City of Overland Park.

An [application](#) and a \$300 annual fee is required.

Massage Therapist License

Massage therapists must file a separate [application](#) with the City Clerk.

Licenses fees for massage therapists are \$75 for new applications, \$50 for renewals, and \$15 for additional applications. An application/identification card is required for each work location. Fingerprints for new applicants must be obtained from the Overland Park Justice Center, 12400 Foster. After a license has expired, a "new" application under the current education and testing standards will be required. Twelve (12) hours of continuing education is required for all license renewals.



To be licensed in Overland Park, massage therapists must meet the following educational requirements:

- National Certification Examination for Therapeutic Massage and Bodywork (NCBTMB), 1992 or later; or Massage and Bodywork Licensing Examination (MBLEx), 2007 or later.
- Certified transcript consisting of not less than 500 hours, in 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.
- American Red Cross First Aid
- American Heart Association CPR

[Checklist for Massage Therapist Applicant](#)

Related Links

[Fingerprinting](#)

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Chapter 5.60 - MASSAGE THERAPY BUSINESSES

Sections:

5.60.010 - 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:

"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 of Kansas.

"Chief of police" means the chief of police of the city of Derby or a designated representative.

"City" means the city of Derby, Kansas.

"Clean" means the absence of soil, dirt, and debris.

"Client" means any person who receives any service of a massage therapy business.

"Council" means the Derby City Council.

"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, commercial sexual exploitation of a minor, 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.

"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.

"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.

"EPA" means the United States Environmental Protection Agency.

"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.

"Massage business license" means the license issued by the city to operate a massage therapy business.

"Massage therapist" means any person who administers massage therapy, except as exempted in Section 5.60.020.

"Massage therapist license" means the license issued by the city to practice massage therapy.

"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.

"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

massage devices that mimic or enhance 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.

"Massage therapy business" means any business offering or providing massage therapy for consideration except as exempted in Section 5.60.020; 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.

"Offer" includes any form of communication, by any medium.

"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.

"Operator" means the person to whom a massage therapy business license is issued.

"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.

"License card" means the license identification card issued by the city to a massage therapist.

"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.

"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. 2290, § 2, 9-13-16)

5.60.020 - 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 of Kansas; 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 business solely utilizing mechanized or electric massage chairs which does not otherwise offer or provide personal massage therapy services by a massage therapist and which does not otherwise employ massage therapists.
9. A trainer of any duly constituted athletic team while in the normal course of his or her duties.

(Ord. No. 2290, § 3, 9-13-16)

5.60.030 - Massage business license required.

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

(Ord. No. 2290, § 4, 9-13-16)

5.60.040 - Application for massage business license.

- A. Any person desiring to obtain a license to operate a massage therapy business shall make written application to the development manager.
- 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, gender, 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 or owning more than five percent interest in the company;
 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 Section 5.60.170E. and amendments thereto;
 6. The name of the owner of the premises upon which the massage 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 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 or owning more than five percent interest in the company has 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 Section 5.60.010;
9. 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 or owning more than five percent interest in the company is currently under indictment, charge or information for any felony or any crime of moral turpitude as defined in Section 5.60.010;
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 or owning more than five percent interest in the company is a registered sex offender;
11. Information listing the applicant's employment history in the massage therapy business or similar business for the five years immediately preceding the date of the application. The information shall include contact information detailing the past locations where applicant has operated a massage therapy business, the past employment locations of the applicant and/or any other massage therapy practitioners with whom the applicant was employed, affiliated or shared office space during said period;
12. Information as to whether such individual or business has ever been refused any similar license, or has had any similar license issued to such individual or business in Derby or elsewhere revoked or suspended, and the reason thereof; and
13. 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. 2290, § 5, 9-13-16)

5.60.050 - Standards for issuance of massage business 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 5.60.040;
 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 Section 5.60.010;
 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, and zoning regulations of the city of Derby. Any massage business operating out of a residence shall be required to obtain a home occupation license as required by Section 602 of Article 6 of the Derby Zoning Regulations.
- 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, limited liability company or other type of organization shall be at least eighteen years of age. Financial interest in a corporation, partnership, limited liability company, or other type of organization includes any officer or director of the

corporation and any stockholder holding more than five percent of the stock of a corporation or any individual manager, entity, or member owning more than five percent interest in the company, entity or organization;

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 5.60.010 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 Section 5.60.010; 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.
5. No person having a financial interest in the partnership, corporation, limited liability company or any other type or organization shall have a similar type of license in any jurisdiction previously suspended or revoked within five years immediately preceding the date of the filing of the application.

(Ord. No. 2290, § 6, 9-13-16)

5.60.060 - Massage therapist license required, exception.

It is unlawful for any individual person to practice massage therapy without a valid massage therapist license as required by this chapter. Provided, however, licenses 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 license under this chapter. Direct supervision requires the presence of the massage therapist holding a license under this chapter to be on the same premises as the student providing massage therapy services.

(Ord. No. 2290, § 7, 9-13-16)

5.60.070 - Application for massage therapist license.

- A. Any person desiring to secure a license to practice massage therapy shall make written application to the development manager on a form provided for that purpose. The application shall be verified by the applicant, accompanied by the required licensee fee and shall provide the following information under oath:
1. The applicant's full name, address, date of birth, any other used aliases, gender, 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 5.60.010 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 Section 5.60.010;
 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 the applicant to administer the service of a massage therapist as required by Section 5.60.080(8) or, if applicable, Section 5.60.085(2) of this code;
 8. Information as to any prior 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 the applicant in any jurisdiction was ever revoked or suspended and the reason or reasons for such revocation or suspension; and

9. A list of locations and massage therapy businesses within the city where the applicant intends to work and offer services as a massage therapist.
10. Information detailing the applicant's employment history for the five years immediately preceding the date of the application including any history of the applicant's prior employment in massage therapy or a similar business. The information shall include contact information detailing the past employment locations of the applicant and for past massage therapy employment the information shall include a list of any other massage therapy practitioners with whom the applicant was employed, affiliated or shared office space during said period.
11. Information as to whether applicant has ever been refused or denied any 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 and reason for such refusal or denial.

(Ord. No. 2290, § 8, 9-13-16)

5.60.080 - Standards for issuance of massage therapy license.

To receive a license to provide services as a massage therapist an applicant 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 5.60.070;
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 and a lawful citizen or resident of the United States.
5. The applicant must not have been convicted or released from imprisonment after conviction of a felony or any crime involving moral turpitude as defined in Section 5.60.010 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.

6. The applicant must not be currently under indictment, charge or information for any felony or any crime of moral turpitude as defined in Section 5.60.010;
7. The applicant must not be a registered sex offender with any federal, state or local government.
8. 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.
9. The applicant must not have had a similar type of license suspended or revoked in any jurisdiction within five years immediately preceding the date of the filing of the application.

(Ord. No. 2290, § 9, 9-13-16)

5.60.085 - Licensing of existing massage practitioners.

For a period of one year after the effective date of this chapter, an applicant who upon the effective date of this chapter is operating in Derby a massage therapy business or is engaged in Derby in providing massage therapy services may obtain a renewable license to provide services as a massage therapist by meeting the following standards:

1. The applicant must meet the requirements contained in subsections (1), (2), (3), (4), (5), (6), (7) and (9) of Section 5.60.080, 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. 2290, § 10, 9-13-16)

5.60.090 - Fees.

- A. For every massage therapy business there shall be a license fee required in the amount as established by resolution of the governing body of the city. This fee shall accompany all initial and renewal license applications and no license shall be issued until the required fee is paid in full.
- B. For every massage therapist license there shall be a license fee required in the amount as established by resolution of the governing body of the city. This fee shall accompany all initial and renewal applications for a license and no license shall be issued until the fee is paid in full.
- C. In the event of denial of application on basis of background check, the applicant may request a fifty-percent refund of their application fee on the condition that a written request for partial refund is made within twenty business days.
- D. An individual required by the provisions of this chapter to obtain both a massage business license and a massage therapist license shall be required to pay the higher fee of the two required licenses, but shall not be required to pay both license fees.
- E. Individuals licensed pursuant to this chapter shall be exempt from the business registration requirements, including the payment of the annual business registration fee, found in Chapter 5.04 of the Derby Municipal Code.

- F. There shall be a fee of five dollars for replacement of the identification card required in Section 5.60.110.
- G. Other than the partial refund authorized for denial of an application in subsection (B) of this section all fees set forth in this section are non-refundable and no fees shall be prorated.

(Ord. No. 2290, § 11, 9-13-16)

5.60.100 - Display of license—Massage therapy business.

The license issued pursuant to the requirements of this chapter shall be displayed in a conspicuous public place within the premises licensed as a massage therapy business. Failure to display such license shall be deemed a violation of this chapter and punishable as set forth in Section 5.60.220.

(Ord. No. 2290, § 12, 9-13-16)

5.60.110 - Display of license identification cards and window signs—Massage therapist.

- A. All massage therapists holding a license under the provisions of this chapter shall, at all times when working in a massage therapy business or providing any service regulated by this chapter, have in their possession a valid license identification card issued by the city and bearing the massage therapist's license number and photograph. All persons granted massage therapist licenses under this chapter shall at all times keep their license identification cards available for inspection upon request by any law enforcement officer, or designated representative thereof.
- B. A window sign declaring that the massage therapist is licensed by the city of Derby will be provided for all massage therapy licensees. The window sign must be visible onsite during all times that the licensee is performing massage therapy.
- C. It is unlawful for any massage therapist license holder to engage in any activity within the purview of this chapter without having such license identification card in his or her possession as well as without having the window sign displayed clearly in sight and failure to do so shall be punishable as set forth in Section 5.60.220.

(Ord. No. 2290, § 13, 9-13-16)

5.60.120 - Duration of massage license, renewal thereof.

- A. A license to operate a massage therapy business and a license to perform services as a massage therapist issued pursuant to the provisions of this chapter shall be valid for a term of two years unless sooner suspended or revoked as provided herein.
- B. Expiring licenses must be renewed in order to continue operation of a massage therapy business and/or prior to performing services as a massage therapist in the following year. Application for renewal of an existing license must be made not later than thirty days prior to the date of expiration of the license.

(Ord. No. 2290, § 14, 9-13-16)

5.60.130 - Suspension or revocation of massage license, notice.

- A. A license issued pursuant to this chapter may be suspended for up to thirty days by the chief of police. Any suspension shall be upon five days' written notice to the licensee, or if the licensee is a corporation or other business entity, any of its officers, directors, partners, associates, managers, members, persons owning more than five percent of a corporation's stock or more than five-percent interest in said company that the licensee and/or any employee thereof has:
 - 1. Failed to provide complete information as requested on any application or if any data is not updated as required by this chapter; or
 - 2. Failed to pay the license fee; or
 - 3. Violated any provision of this chapter or any other ordinance, rule or regulation by the city council of the city of Derby which is not specified in subsection (B) below as grounds for revocation of a license; or
 - 4. Has aided or abetted the commission of, or knowingly allowed or encouraged any act which is a violation of this chapter which is not specified in subsection (B) below as grounds for revocation of a license; or
 - 5. Has violated or failed to comply with the sanitary requirements set forth in Section 5.60.150 of this chapter, or are in violation of the fire, zoning or building codes of the city, or the state of Kansas.
- B.

A license issued pursuant to this chapter may be revoked by the chief of police. Any revocation shall be upon five days' written notice of the licensee, or if the licensee is a corporation or other business entity, any of its officers, directors, partners, associates, managers, members, persons owning more than five percent of a corporation's stock or interest in said company or any employee thereof:

1. Has knowingly made any false statement or given any false information in connection with an application for a license or a renewal of a license; or
 2. Has been convicted of, or is under indictment, charge or information for any felony or any crime of moral turpitude as defined in Section 5.60.010 or any act which would be grounds for denial of an application for a license, or otherwise becomes ineligible for a license; or
 3. Has failed to allow the entry upon and inspection of the premises as required by Section 5.60.160 of this chapter; or
 4. The licensee has committed recurring violations or recurring instances of noncompliance with the requirements of this chapter. "Recurring violations or recurring instances of noncompliance shall mean that the licensee or if the licensee is a corporation or other business entity, any of its officers, directors, partners, associates, managers, members, persons owning more than five percent of a corporation's stock or more than five percent interest in said company or its employees, individually or cumulatively, have committed four or more offenses or been documented as committing four or more instances of non-compliance as set forth in subsection A. above within a two-year period. For the purposes of this provision, it is irrelevant whether an offense or instance of noncompliance occurred before or after suspension for a previous offense or whether the offense or offenses occurred on or upon the same licensed premises.
- C. For the purposes of this section, "conviction" shall include being placed on diversion or deferred judgment or being adjudged guilty upon entering a plea of no contest, and the filing of charges or a conviction in a court of law is not required to establish that a licensee has violated any provision of this chapter or any other ordinance, rule or regulation by the city council of the city of Derby. A certified copy of conviction from any local or state court is prima facie evidence of a violation.
- D.

For the purposes of subsections (A) and (B) of this section, the chief of police or the city shall provide written notice of the intent to revoke, suspend or deny a massage therapy business license or a massage therapist license by personal service or by certified mail, return receipt requested. The notice shall be sent to the mailing address of the licensee on file with the city. The notice shall provide the effective date of the revocation or suspension of the license.

Such notice shall detail the reasons or basis for the suspension or revocation of the license and shall specify the rights of the licensee to appeal any such revocation or suspension.

(Ord. No. 2290, § 15, 9-13-16)

5.60.140 - Appeal procedure.

- A. Any applicant or licensee aggrieved by the denial, suspension or revocation of a massage therapy business license or a massage therapist license may file with the city clerk a written notice of appeal to the city council within twenty business days of the decision by the chief of police or designee.

The notice of appeal shall specify:

1. The name and address of the applicant;
 2. The date of application;
 3. The date of the denial, suspension or revocation of the license or application;
and
 4. The factual basis for the appeal.
- B. Upon receipt of a complete and timely filed notice of appeal, the city clerk shall schedule a hearing before the city council no later than thirty days from the date of the filing of the notice of appeal. Any appeal shall stay the suspension or revocation of the license until the matter is heard by the city council.
 - C. The city council may approve the denial, suspension or revocation, overrule the denial, suspension or revocation or modify the decision of the chief of police.
 - D. In any hearing before the city council pursuant to this section, a certified copy of a conviction from any local, state or federal court for any violation is prima facie evidence of such violation.
 - E.

The city council's decision may be appealed to the eighteenth judicial district court of the state of Kansas pursuant to K.S.A. 60-2101 and any amendments thereto. Any such appeal to the district court shall not stay the denial, suspension or revocation of the license or any modification imposed thereupon by the city council.

(Ord. No. 2290, § 16, 9-13-16)

5.60.150 - Sanitary requirements.

All massage therapy business facilities and equipment must comply strictly with the following sanitary conditions:

- A. All surfaces of floors, walls, and ceilings and all equipment used in massage therapy must be capable of being cleaned easily.
- B. All surfaces subject to dermal contact used in the treatment of clients must be completely cleaned and disinfected after every use or covered with a fresh, sanitary, disposable liner or cover or with a cloth sheet or cover that has not been previously used for a different client since laundering.
- C. Towels, robes, bandages, pads, paper, or other articles that come into contact with any part of the client's body must be laundered, cleaned and disinfected, or disposed of after each use and before being used by a different client.
- D. Covers, liners, or sheets designated in subsections (B) and (C) of this section must be stored prior to use in a sanitary environment.
- E. Lavatory and toilet facilities must be provided, along with adequate and convenient hand-washing facilities, including hot and cold running water, soap and towels, which are accessible to employees.
- F. Wet and dry heat rooms, shower compartments, and toilet rooms shall be thoroughly cleaned and disinfected each day the business is in operation.

Bathtubs shall be thoroughly cleaned and disinfected after each use.

(Ord. No. 2290, § 17, 9-13-16)

5.60.160 - Inspection of premises; immediate right of entry.

The premises of a massage therapy business or the location or premises where any licensed massage therapist is offering or performing massage therapy services shall be open to inspection by any fire, zoning, licensing and building code enforcement personnel of the city of Derby, as well as Derby Police Officers or personnel from other law enforcement agencies. Such inspections shall be for the purposes of determining compliance with the provisions of this chapter. Failure by any person to allow any enforcement personnel or law enforcement official immediate access to the premises or to hinder such officer or personnel in any manner shall be grounds for revocation or suspension of any massage therapy business license and/or massage therapist license.

(Ord. No. 2290, § 18, 9-13-16)

5.60.170 - Operating requirements—Massage therapy business.

- A. **Written Receipts to Clients Available.** A massage therapy business shall make available upon request by a patron a written receipt of payment for massage therapy services. The receipt shall clearly state the type of services performed and the total amount of money such services cost the client.
- B. **Employee Registers Required.** The owner, operator, supervising employee or anyone in control of a massage therapy business shall maintain a daily register/time sheet for all employees of the massage therapy business on a form approved by the chief of police and shall contain the identifying information for all employees, including the name, address, birth date, gender and duties of each employee, the hours of employment on a daily basis of each employee, and such information as may be required by the chief of police.

The daily register required in this subsection shall be kept on file upon the same premises as the licensed business for a period of one year, and shall be kept for all persons deemed "employees" as that term is defined in Section 5.60.010 and amendments thereto.

- C. The owner, operator, supervising employee or anyone in control of a massage therapy business shall maintain a copy of the massage therapist license card for all employees who are required to be licensed by this chapter.
- D. **Hours of Operation.** A licensed massage therapy business shall be closed and operations shall cease between the hours of twelve midnight and six a.m. each day.
- E.

The door or doors providing entry to a massage therapy business by the public shall remain unlocked during business hours when the establishment is open for business or when clients are present. Provided, if a massage therapy business is operating as a sole proprietorship and does not have staff available to assure security and safety for clients and massage staff behind closed doors, the door or doors providing entry area to the massage therapy business may be locked during business hours. However, the door must be openable from the interior side without the use of a key, card, or special knowledge or effort. A simple motion of the door handle must open the door and allow occupants to exit. The business owner or employee on location who fails to unlock the premises for immediate inspection after a uniformed law enforcement officer has knocked, announced, called or otherwise communicated with the business and clearly identifies themselves as law enforcement requesting immediate entry for inspection will be in violation of the inspection and immediate right of entry provision of this chapter.

- F. Conduct of Premises. All licensees licensed under the provisions of this chapter shall at all times be responsible for the conduct of all employees, independent contractor massage therapists and the employees of an independent contractor massage therapist while on the licensed premises and for any act or omission constituting a violation of the provisions of this chapter. Any violation of city, state or federal laws committed on the licensed premises by such licensee, employee, independent contractor massage therapist or the employee of an independent contractor massage therapist affecting the eligibility or suitability of such person to hold a license may be grounds for suspension or revocation of the same.
- G. Supervision of Licensed Premises. A licensee shall have the premises supervised at all times when open for business. The licensee, the licensee's resident agent if a corporation or other business entity or a person employed and licensed as a massage therapist shall be personally present upon the premises and supervising the business at all such times and shall not violate or permit others to violate any applicable provision of this chapter.
- H. The violation of any such provision of this chapter by any agent or employee of the licensee shall constitute a violation by the licensee.

(Ord. No. 2290, § 19, 9-13-16)

5.60.180 - Prohibited acts.

It shall be unlawful and punishable as set forth in Section 5.60.220 for any operator, agent or employee of an operator, massage therapist, independent contractor massage therapist, or employee of an independent contractor massage therapist to commit any of the following acts:

- A. Permit to be performed, offer to perform or perform with any client any sexual act prohibited by state statute or city ordinance; including sale of sexual relations; or
- B. Permit to be performed, offer to perform or perform with any client an act of sexual intercourse, oral-genital contact, anal copulation, the touching of the sexual organs, pubic region other than releasing scar tissue from childbirth, female breast of a person, or manual or other contact stimulation of the genitalia for the purpose of arousing or gratifying the sexual desires of the operator, agent, employee, massage therapist or client; or
- C. Expose while administering massage therapy for compensation the human male or female genitals, anus, anal cleft or cleavage; the female breast below a horizontal line across the top of the areola at its highest point, which includes the entire lower portion of the human female breast, but does not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or other wearing apparel, provided the areola is not exposed in whole or in part; or covered male genitals in a discernibly turgid state; or
- D. While in the presence of any person, or while administering or receiving massage therapy fail to cover with a fully opaque covering the human male or female genitals, anus, anal cleft or cleavage; the female breast below a horizontal line across the top of the areola at its highest point, which includes the entire lower portion of the human female breast, but does not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or other wearing apparel, provided the areola is not exposed in whole or in part; or
- E. For any person who owns, rents, leases, operates or manages a massage business to cause, allow, or permit in or about said massage business, any person to engage in the acts prohibited in this section.

(Ord. No. 2290, § 20, 9-13-16)

5.60.190 - Persons under age eighteen prohibited services.

No licensee shall perform or permit any massage therapy to be provided to a person under the age of eighteen years, provided a person under the age of eighteen years 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.

(Ord. No. 2290, § 21, 9-13-16)

5.60.200 - Transfer of license.

No massage therapy business license or massage therapist license is transferable or assignable and such authority as a license confers shall be conferred only on the licensee and/or the location named therein. Additionally, if a massage therapy business or the business entity that holds the license of such a business changes either the name of the business entity or the name under which the entity is doing business ("dba" name), the existing license shall not transfer and a new license shall be required to continue to conduct a massage therapy business.

(Ord. No. 2290, § 22, 9-13-16)

5.60.210 - Applicability to existing businesses and providers of massage therapy.

- A. The provisions of this chapter shall be applicable to all existing massage therapy establishments or businesses currently participating in the activities described and regulated by this chapter, regardless of when established. All existing massage therapy businesses at the time of the passage of the ordinance codified in this chapter must submit an application for a license within one hundred twenty days of the effective date thereof.
- B. The provisions of this chapter shall also apply to all persons who are currently engaged in the provision of massage therapy or are participating in the provision of activities described and regulated by this chapter. Such persons must submit an application for a massage therapist license within one hundred twenty days of the effective date of the ordinance codified in this chapter.

(Ord. No. 2290, § 23, 9-13-16)

5.60.220 - Penalties.

Any person who violates any of the provisions of this chapter within the corporate limits of the city of Derby shall be deemed guilty of a misdemeanor and upon conviction hereof shall be punished by a fine of not more than two thousand five hundred dollars or by imprisonment for not more than one year or by both such fine and imprisonment, however, upon a conviction of an offense related to the conduct of a massage business, the court shall impose a mandatory minimum fine of no less than two hundred fifty dollars. Upon a conviction of an offense relating to the conduct of an individual massage therapist, the court shall impose a mandatory minimum fine of no less than one hundred dollars.

(Ord. No. 2290, § 24, 9-13-16)

5.60.230 - Nuisance declared; injunctive relief or civil remedies.

Any violation of the provisions of this chapter shall be and the same is declared to be an unlawful and public nuisance. The city may, in addition to or in lieu of any other remedies set forth herein commence an action to enjoin, remove or abate such nuisance in the manner provided by law and may take such other steps and apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such public nuisance and restrain or enjoin any person from establishing, operating or maintaining a massage therapy business or offering massage therapy services contrary to the provisions of this chapter.

(Ord. No. 2290, § 25, 9-13-16)

5.60.240 - Severability.

Should a court of competent jurisdiction declare any section, clause, provision, sentence or part of this chapter to be unconstitutional or invalid, such decision shall affect only such section, clause, provision, sentence or part so declared unconstitutional or invalid and shall not affect any other section, clause, provision, sentence or part of this chapter.

(Ord. No. 2290, § 26, 9-13-16)

Policy Report
K-7 and Parallel traffic issue
Oct. 2, 2018

Prepared by:



Paul Kramer
City Manager

Issue:

At the Leavenworth County Development Corp. (LCDC) Infrastructure Committee meeting Tuesday, Sept. 25, a representative from the Unified Government (UG) reported that efforts to have the intersection at K-7 and Parallel upgraded to an R-CUT seeking to prevent a variety of accident types has been postponed due to the efforts of a few UG Commissioners.

The main issue related to the postponement seems to be certain UG Commissioners seeking to have the speed limit lowered on K-7 rather than modify the intersection. It is not clear if the Kansas Department of Transportation (KDOT) has been involved with the speed limit discussion at this time.

As part of the overall issue, the UG is accepting public comment in the way of information sent to UG County Administrator Doug Bach. UG staff and elected officials plan to meet October 29 to discuss the R-CUT project at K-7 and Parallel Parkway. Our understanding is that KDOT has been invited to participate in the meeting.

Discussion:

Staff opinion is that the abandonment of the R-CUT traffic solution in favor of lower the speed limit on K-7 is counterproductive to best practices in traffic management and will have a detrimental impact on businesses in Leavenworth and Wyandotte County. Staff is prepared to draft a letter in support of the R-CUT project and in opposition of any change in speed limit on K-7 to be included as public comment at the Oct. 29 meeting reference above.