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**ORDINANCE NO. F-0306**

**AN ORDINANCE REGULATING MASSAGE THERAPISTS AND  
MASSAGE ESTABLISHMENTS**

WHEREAS, the Mayor and the City Council recognize that the practice of massage therapy affects the public health, welfare and safety and its regulation and control is of public interest; and

WHEREAS, massage therapists must have a knowledge of anatomy and physiology and an understanding of the relationship between the structure and the function of the tissues being treated and the total function of the body; and

WHEREAS, it is in the public interest that massage therapists, as defined in this ordinance, merit and receive the understanding and confidence of the public, and to this end, that only qualified persons be permitted to hold themselves out to the public as massage therapists.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEATON, DUPAGE COUNTY, ILLINOIS, in exercise of its home rule powers that:

SECTION 1: A new Article VII (Massage Establishments and Massage Therapists) to Article 26 (Businesses) is hereby added to the Wheaton City Code to read:

**"ARTICLE VII**

**MASSAGE ESTABLISHMENTS AND MASSAGE THERAPISTS**

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26-178. DEFINITIONS: The following words or phrases shall have the meanings ascribed to them below, unless otherwise indicated by the context:

**MASSAGE** Any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating of the external soft parts of the body with hands or with aid of any mechanical electrical apparatus or appliances, with or without rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations used in this practice, under such circumstances that it is reasonably expected that the person to whom treatment is provided, or some third party on such persons behalf, will pay money or give other consideration or any gratuity therefore.

**MASSAGE ESTABLISHMENT** Any establishment having a source of income or compensation derived from the practice of massage as defined above, and which has a fixed place of business where any person, firm, association or corporation engages in or carries on any of the activities described above.

**MASSAGE THERAPIST** Any person who performs a massage as herein defined.

**PATRON** Any person who receives a massage under such circumstances that it is reasonably expected that he or she will pay money or give other consideration therefore.

**SEXUAL OR GENITAL AREA** The term sexual or genital area is defined as including the genitals, pubic area, anus or perineum of any person, or the vulva or breasts of a female.

26.179. LICENSE OR PERMIT REQUIRED.

1. It shall be unlawful for any person, association, firm or corporation to practice or administer any method of treatment listed in this article without first obtaining and maintaining a valid massage therapist permit, as required by this article. It shall also be unlawful for a student/trainee to charge a fee or be compensated.
2. It shall be unlawful for any person, association, firm or corporation to operate a massage establishment in the City without a valid and current license therefore issued by the City pursuant to the terms of this article. A separate license shall be required for each massage establishment location

regardless of whether such multiple establishments are operated by the same person, association, firm or corporation. All massage therapists employed in such establishments must meet the standards for massage therapists.

26-180. EXEMPTIONS. The provisions of this article shall not apply to.

1. Hospitals, nursing homes or persons holding an unrevoked certificate to practice the healing arts under the laws of the State of Illinois, or to those working under the direction of any such persons in any such establishments.
2. Any barber, cosmetologist, esthetician or nail technician lawfully carrying on their respective businesses to the extent authorized under a valid unrevoked license or certificate of registration issued by the State of Illinois. Provided, this exemption is only intended to permit normal and customary barbering, cosmetology, esthetic and nail technology services which involve incidental physical contact, such as scalp rubs, facials, and hand manipulations which otherwise qualify as massage activities. This exemption is not intended, and does not permit, general massage activities as part of any barber, cosmetologist, esthetician or nail technician business beyond that authorized by their state license or certification.
3. Any athletic trainer registered in the State of Illinois who administers such athletic-related massage in the normal course of training duties.
4. A business which employs or includes not more than one massage therapist shall not be required to apply for or obtain a massage establishment license. Such exempt business must be located in a structure which contains no more than one room where massage activities are performed. Except for businesses which operate separate and distinct hours of operation, such exempt businesses must also be the sole massage activity within such structure. Provided a massage therapist permit shall be required for the individual massage therapist performing massage activities in such exempted business.
5. Any massage establishment or massage therapist which has conducted massage therapy business within the City of Wheaton for at least five (5) years prior to the effective date of the ordinance and satisfies the requirements of 26-182(3) (3.1-3.3). Any massage establishment or massage therapist seeking an exemption under this section 5 shall submit to the City Clerk evidence that it satisfies the requirements of this section within sixty (60) days of the effective date of this ordinance. The City Clerk may request that information or additional information, which will reasonably establish the massage establishment or massage therapist exemption under this section 5. Failure to timely submit the information shall constitute a waiver of the massage establishment or massage

therapist's ability to seek an exemption and the massage establishment or therapist shall then not be exempt from the application of this ordinance.

6. Where massage services are actually performed at the patron's premises, including the patron's place of business or residence, a massage establishment license shall not be required for such patron's premises. Provided, a massage therapist permit shall be required for the massage therapist performing massage activities in such patron's premises.

26-181. APPLICATION FOR MASSAGE ESTABLISHMENT LICENSE. Any person desiring to obtain a license to operate a massage establishment shall make application to the City Clerk. The City Clerk shall have the right to confirm any of the information asked for, or provided in the application. Applications shall include the following.

1. The name (including nicknames or aliases) and address, telephone number, social security number, and age of the applicant, the registered agent of the applicant if the applicant is a corporation, and the general or managing partners, if the applicant is a partnership.
2. The location of the massage establishment.
3. A complete statement of all convictions, or sentence of withheld judgment such as court supervision, of the applicant as provided in this section. If the applicant is a corporation, such statement shall include applicant's officers, and directors thereof, and any stockholder or stockholders owning in the aggregate more than twenty percent of the stock of such corporation. If the applicant is a partnership, such statement shall include all general partners, and any limited partner owning more than twenty percent of the aggregate limited partner interest in such partnership. Such listing shall include the following:
  - 3.1 Any offense involving sexual misconduct with children or other sex offenses as defined in Article II of the Criminal Code of 1961, as amended.
  - 3.2 Any felony based upon conduct or involvement in such business or activity or related or similar business or activity, within the past ten years; or
  - 3.3 Any felony unrelated to conduct or involvement in such business or activity or related or similar business or activity, but which felony involved the use of a deadly weapon, traffic in narcotic drugs, or violence against another person, including rape, within the past five years; or

- 3.4 Any misdemeanor or licensing ordinance violation, based upon conduct or involvement in such business or activity or related or similar business or activity, within the past year.
4. A description of the proposed massage establishment, including the number of massage therapists, other activities or business conducted at the same location, and the physical facilities to be used.
  5. A statement of whether the business will be conducted by a manager. In such case, the manager's name, address, telephone number and age shall be provided, along with a statement of any convictions as set forth under subsection 3 above.
  6. A current certificate of inspection of the premises from an applicable county board of health, if required.
  7. The license fee as provided in Section 26-186.
  8. Business, occupation, or employment of the applicant for five years immediately preceding the date of application.
  9. In the event applicant is made aware that any information or document submitted as part of this application process is inaccurate or incomplete, applicant shall immediately notify the City Clerk and provide appropriate corrections. Failure to accurately and completely provide, or as necessary update, required information may delay the processing of such application or result in its denial or result in the revocation of an existing license.
  10. If upon investigation, the City determines that an applicant's licensure or certification may not be bona fide, or that the organization providing the licensure or certification may not be bona fide, the City may conduct additional investigation by requiring the applicant to submit to fingerprinting. When fingerprinting is required, the applicant shall present himself or herself for fingerprints to be taken by the City of Wheaton Police Department. If the applicant is a corporation, fingerprints shall be required of applicant's officers, directors, and any stockholder or stockholders owning in the aggregate more than twenty percent of the stock of such corporation. If the applicant is a partnership, fingerprints shall be required of all general partners, and any limited partner owning more than twenty percent of the aggregate limited partner interest in such partnership. Applicant shall pay the fingerprint fee as provided in Section 26-186.3 for each person required to submit fingerprints.
  11. Two passport size photographs (1 inch by 1.5 inches) of the Applicant (head and shoulders area, face forward) shall be provided by the applicant to be used in the investigation of the applicant, the preparation of a photo identification license card, and the identification of the license holder

following issuance. Provided, in the case of a renewal application, the City Clerk may waive the requirement for photographs if the applicant's photographs are on file and new photo identification permit cards are not to be issued.

26-182. APPLICATION FOR MASSAGE THERAPIST PERMIT. Any person desiring to obtain a massage therapist permit shall make application to the City Clerk. The City Clerk shall have the right to confirm any of the information asked for, or provided in the application. Applications shall include the following:

1. The name (including any nicknames or aliases), address, telephone number, social security number, and age of the applicant.
2. A complete statement of all convictions, or sentences of withheld judgment such as court supervision of the applicant as follows:
  - 2.1 Any offense involving sexual misconduct with children or other sex offenses as defined in Article II of the Criminal Code of 1961, as amended.
  - 2.2 Any felony based upon conduct or involvement in such business or activity or related or similar business or activity, within the past ten years; or
  - 2.3 Any felony unrelated to conduct or involvement in such business or activity or related or similar business or activity, but which felony involved the use of a deadly weapon, traffic in narcotic drugs, or violence against another person, including rape, within the past five years; or
  - 2.4 Any misdemeanor or licensing ordinance violation, based upon conduct or involvement in such business or activity or related or similar business or activity, within the past two years.
3. Evidence that such applicant has received training and/or is certified by an institution or nationally recognized professional association which teaches theory and method of massage, and the applicant has obtained a current cardio-pulmonary resuscitation ("CPR") certification. Any applicant for a new, non-renewal, permit shall also be required to submit written proof establishing one of the following:
  - 3.1 That the applicant has graduated from a 500-hour massage therapy school approved by the American Massage Therapy Association Commission on Accreditation and Training and/or approved by the Illinois State Board of Education;



- 3.2 That the applicant has achieved full active membership status within the American Massage Therapy Association or a professional organization with standards comparable to the American Massage Therapy Association, with mandated continuing education requirements and a written code of ethics;
  - 3.3 That the applicant has achieved a state license from a state which regulates massage therapy by means of a written application;
  - 3.4 That the applicant is an associate member of the American Massage Therapy Association or a professional organization with standards comparable to the American Massage Therapy Association, with mandated continuing education requirements and a written code of ethics, but only so long as the associate member is under the direct supervision of a massage therapist qualifying under subsections 3(3.1-3.3) of this section, who is physically present at the premises during the performance of the massage therapy by the associate.
4. Information regarding whether the applicant is eligible for issuance of a license as provided pursuant to Section 26-185.
5. The permit fee as provided in Section 26-186.
6. Business, occupation, or employment of the applicant for five years immediately preceding the date of application.
7. In the event applicant is made aware that any information or document submitted as part of this application process is inaccurate or incomplete, applicant shall immediately notify the City Clerk and provide appropriate corrections. Failure to accurately and completely provide, or as necessary update, required information may delay the processing of such application or result in its denial or result in the revocation of an existing license.

8. If upon investigation, the City determines that an applicant's licensure or certification may not be bona fide, or that the organization providing the licensure or certification may not be bona fide, the City may conduct additional investigation by requiring the applicant to submit to fingerprinting. When fingerprinting is required, the applicant shall present himself or herself for fingerprints to be taken by the City of Wheaton Police Department. Applicant shall pay the fingerprint fee as provided in Section 26-186.3 for each person required to submit fingerprints.
9. Two passport size photographs (1 inch by 1.5 inches) of the Applicant (head and shoulders area, face forward) shall be provided by the applicant to be used in the investigation of the applicant, the preparation of a photo identification license card, and the identification of the license holder following issuance. Provided, in the case of a renewal application, the City Clerk may waive the requirement for photographs if the applicant's photographs are on file and new photo identification permit cards are not to be issued.

26-183. APPLICATION PROCESSING.

1. An application shall not be considered proper or filed until all information and material required of the applicant pursuant to Sections 26-181 and/or 26-182 have been submitted.
2. Upon receipt of a proper application, the City Clerk shall investigate the information contained in the application and shall determine whether the applicant and the premises designated, if applicable, are in compliance with applicable state and local laws.
3. The investigation, including inspections and background checks, shall be completed within thirty business days after receipt of a proper application. Provided, the City Clerk may extend this investigation period by an additional period upon a finding that such additional period is needed to properly complete the investigation. Provided, whenever such an extension period is invoked, written notice shall be provided to the applicant along with the specific reasons for such extension.
4. If, within ten business days, following completion of the investigation, the City Clerk determines that the applicant and/or premises are in compliance with the applicable laws of the City, the City Clerk shall issue the license and/or photo identification permit card.
5. If, within ten business days, following completion of the investigation, the City Clerk determines that the applicant or premises are not in compliance with the applicable laws of the City, the City Clerk shall notify the applicant in writing that its license or permit has been denied, setting forth the reasons therefore, and advising the applicant of his or her right to a



hearing pursuant to Section 26-191. Such denial shall be final and effective on the eleventh day following mailing of the notice by the City Clerk. The fee paid by the applicant pursuant to Section 26-186.1, shall be returned, less \$50.00 which will be retained as a processing fee in the case of a massage establishment and less \$10.00 which shall be retained as a processing fee in the case of a massage therapist. Any fees paid by the applicant pursuant to Section 26-186.3 shall be retained as a processing fee.

26-184. TRANSFER - CHANGES IN OWNERSHIP OR MANAGEMENT.

1. Any license issued pursuant to this article shall be applicable only to the specific licensee and location designated, and may not be sold, transferred, or otherwise assigned. Provided, where the licensee remains the same, but a request is made to designate and substitute a different location, the City Clerk may approve such new location upon submission of proof that such location is in compliance with the provisions of Section 26-194 of this article. A fee of \$50.00 shall be required for processing such location changes.
2. Any permit issued pursuant to this article shall be applicable only for the specific person designated, and may not be sold, transferred or otherwise assigned.
3. For purposes of this article, a transfer of ownership or control of a massage establishment shall mean the sale, lease, or sublease of the business, the transfer of securities which constitute a controlling interest in the business whether by sale, exchange or similar means, or the establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by request or other operation of law upon the death of the person possessing the ownership or control, or any person not previously listed as an applicant pursuant to Section 26-181 acquires an ownership interest in the business of twenty percent or more.
4. A transfer in the ownership or control of a massage establishment shall constitute change in the licensee and the existing license shall be deemed surrendered and extinguished. A new application and license shall be filed and processed as provided in Sections 26-181 and 26-182 prior to such transfer taking effect. Any transfer in the ownership of a massage establishment in violation of this section shall constitute operation of such business without a license.
5. Notice shall be provided prior to any change of the designated manager conducting business for the massage establishment license. The new manager must be qualified to operate the massage establishment as provided in Section 26-185. The licensee shall, not less than ten business days before such change is to take effect, give the City Clerk written notice

of such change. The notice shall include any information concerning the new manager which is required in Section 26-181 of this article.

26-185. LIMITATION ON ISSUANCE AND RENEWAL OF LICENSE OR PERMIT. No massage establishment license or massage therapist permit shall be issued or renewed as follows:

1. To an applicant who has been convicted of the following offenses:
  - 1.1 Any offense involving sexual misconduct with children or other sex offenses as defined in Article II of the Criminal Code of 1961, as amended.
  - 1.2 Any felony based upon conduct or involvement in such business or activity or related or similar business or activity, within the past ten years; or
  - 1.3 Any felony unrelated to conduct or involvement in such business or activity or related or similar business or activity, but which felony involved the use of a deadly weapon, traffic in narcotic drugs, or violence against another person, including rape, within the past five years; or
  - 1.4 Any misdemeanor or licensing ordinance violation, based upon conduct or involvement in such business or activity or related or similar business or activity, within the past two years.
2. To an applicant whose license or permit issued under this article has been revoked for cause.
3. To an applicant who at the time of application for renewal of any license or permit issued hereunder would not be eligible for such license or permit upon a first application.
4. To an applicant under the age of eighteen years of age.
5. To an applicant where grounds for revocation exists as provided under Section 26-190.
6. In addition to the provisions stated above, no massage establishment license shall be issued or renewed as follows:
  - 6.1 To a partnership, if any general partner thereof, or any limited partner owning more than 20% of the aggregate limited partner interest in such partnership, would not be eligible to receive a license or permit hereunder.

- 6.2 To a corporation, if any officer or director, or any stockholder or stockholders owning in the aggregate more than 20% of the stock of such corporation, would not be eligible to receive a license hereunder.
  - 6.3 To a corporation, unless it is incorporated in Illinois, or unless it is a foreign corporation which is qualified under the "Business Corporation Act of 1983", as amended, to transact business in Illinois.
  - 6.4 To any applicant whose place of business is conducted by a manager unless the manager possesses the same qualifications required by the licensee.
  - 6.5 To an applicant who is not a beneficial owner of the business to be operated by the licensee.
7. In addition to the provisions above, no massage therapist permit shall be issued or renewed to an applicant unless such person has received training and/or is certified by an institution or nationally recognized professional association which teaches theory and method of massage as set forth herein, and the applicant has obtained a current cardio-pulmonary resuscitation ("CPR") certification. Except for renewal applicants described herein, the applicant shall establish one of the following requirements:
- 7.1 That the applicant has graduated from a 500-hour massage therapy school approved by the American Massage Therapy Association Commission on Accreditation and Training and/or approved by the Illinois State Board of Education;
  - 7.2 That the applicant has achieved full active membership status within the American Massage Therapy Association or a professional organization with standards comparable to the American Massage Therapy Association, with mandated continuing education requirements and a written code of ethics;
  - 7.3 That the applicant has achieved a state license from a state which regulates massage therapy by means of a written application;
  - 7.4 That the applicant is an associate member of the American Massage Therapy Association or a professional organization with standards comparable to the American Massage Therapy Association, with mandated continuing education requirements and a written code of ethics, but only so long as the associate member is under the direct supervision of a massage therapist qualifying under subsections 3(3.1-3.3) of this section, who is physically

present at the premises during the performance of the massage therapy by the associate.

26-186. FEES.

1. The fee for a massage establishment license required by Section 26-179.2 shall be \$100.00 and such license shall be valid for two years from July 1 to June 30 of the second year.
2. The fee for a massage therapist permit required by Section 26-179.1 shall be \$25.00 and such permit shall be valid for two years from July 1 to June 30 of the second year.
3. A fingerprint fee of equal to the current rate being charged by the State of Illinois for processing fingerprints shall be paid for each person required to submit fingerprints under this ordinance.

26-187. EXPIRATION OF LICENSE AND PERMITS - RENEWAL.

1. Each license and permit shall expire every two years on June 30 and may be renewed only by making application as provided in Sections 26-181 and 26-182. Provided, in lieu of full submittal, an applicant may on forms provided by the City Clerk, certify that the information previously provided remains true and valid. This renewal application shall be processed as provided in Section 26-183. Application for renewal should be made at least thirty days before the expiration date, and when made at least thirty days before the expiration date, the expiration of the license or permit will not be affected. Renewal applications for massage establishment licenses and massage therapist permits shall be obtained from the City Clerk's office.
2. When the City Clerk denies renewal of a license or permit as provided for in Section 26-185, the applicant shall not be considered for a license or permit for one year from the date of denial. Provided, if subsequent to denial the City Clerk finds that the basis for denial of the renewal license or permit has been corrected or abated, the applicant may be granted a license or permit.

26-188. MESSAGE ESTABLISHMENT FACILITIES. No license, or renewal thereof, shall be issued to conduct a massage establishment unless an inspection, conducted not less than once each year, discloses that the establishment complies with each of the following minimum requirements:

1. Hot and cold running water shall be provided.

2. Adequate private dressing and toilet facilities shall be provided for patrons.
3. All walls, ceilings, floors, steam rooms, and other physical facilities in a massage establishment shall be kept in good repair, and maintained in a clean and sanitary condition.
4. Clean and sanitary towels and linens shall be provided for each client receiving massage services. No common use of towels or linens shall be permitted.
5. When any license shall have been revoked for cause, no license shall be considered for the period of one year thereafter for the conduct of a massage establishment in the premises described in the revoked license.

26-189. NOTICE OF REVOCATION, SUSPENSION OR REFUSAL OF A LICENSE OR PERMIT. No license or permit shall be revoked, suspended, or refused until the applicant, license holder or permit holder has received written notice from the City Clerk. The notice shall set forth the allegations of why the license or permit should be revoked, suspended, or refused. Said written notice shall be served upon the license holder by delivering the same personally or by leaving such notice at the place of business or residence of the applicant, license holder or permit holder in the custody of a person of suitable age and discretion. In the event the license holder cannot be found, and the service of such notice cannot be otherwise made in the manner therein provided, a copy of such notice shall be sent by registered mail, postage prepaid, addressed to the license holder at the licensee's place of business or residence. The revocation or suspension of a license or permit shall be deemed effective three business days after personal service or after the mailing of the written notice as provided herein.

26-190. REVOCATION OR SUSPENSION OF A LICENSE OR PERMIT. The license of a massage establishment or the permit of a massage therapist may be revoked or suspended, in addition to the fines provided for in Section 26-193 herein, upon one or more of the following grounds:

1. The licensee or permittee has committed an act(s) of fraud or deceit in the application for license or permit, or renewal thereof, submitted to the City Clerk.
2. The permittee is engaged in the practice of massage under a false or assumed name, or is impersonating another massage therapist of a like or different name.
3. The licensee or permittee has committed an act of fraudulent, false, misleading or deceptive advertising, or prescribing medicines, drugs, or practices any other licensed profession without legal authority therefore.

4. The licensee or permittee has committed an act(s) of prostitution, sexual offense, or trafficking in controlled substances after the date of issuance of a massage establishment license or of a massage therapist permit.
5. The licensee or permittee is found to be in violation of any section of this article.
6. The licensee permits acts of prostitution or solicitations for acts of prostitution to be performed within the premises or elsewhere or permits any procedure during the performance of services within or off the premises that are performed for the purpose of sexual arousal or gratification of any patron, or should reasonably be expected to cause such result, or permits the use or trafficking of controlled substances or cannabis on the premises.
7. The licensee or permittee performs an act of prostitution within the premises or without the premises or solicits an act of prostitution on or off the premises or performs services within or without the premises in such a manner for the purpose of sexual arousal or gratification of a patron, or should reasonably be expected to cause such result, or the licensee uses or is trafficking in controlled substances or cannabis.
8. The licensee or permittee has violated or is not in compliance with Section 26-192 of this article and the license or permit has been suspended within the preceding twenty-four months.
9. A licensee or a permittee knowingly conducted massage activities in the City during a period of time when the licensee's license, or permittee's permit, was suspended.
10. Within a twenty-four month period, a person or persons committed an offense as listed in Section 26-185.1, which substantially occurred in or on a licensed premises, and for which a conviction has been obtained, and the person or persons were employees of the licensee at the time the offenses were committed. The fact that a conviction is being appealed shall have no effect on the revocation of the license.
11. A licensee is delinquent in payment to the City for ad valorem taxes or other taxes related to the massage therapy business.

26-191. HEARING.

1. Any applicant, licensee or permit holder who receives a notice of denial, revocation or suspension may file a request for hearing with the City Manager as provided herein. Such request shall be filed with the City Manager in writing no later than ten business days following receipt of the notice, and shall include a response to the City Clerk's notice. Such



response shall include a brief statement addressing the substantive deficiencies cited in the City Clerk's notice and shall set forth the basis for why the license or permit should not be denied, revoked or suspended. If a request for hearing is filed of an order of the City Clerk suspending or revoking a license or permit, such suspension or revocation shall be stayed pending final order of the City Manager as provided in this section. If a request for hearing is not filed the City Manager may review the allegations and any other pertinent material, and enter a ruling revoking, suspending or refusing to issue a license or permit.

2. When any applicant, licensee or permittee requests a hearing, the City Manager shall schedule an informal public hearing not later than ten business days following receipt of such request. The purpose of the hearing will be to offer the applicant, licensee or permit holder an opportunity to show cause why the application should not be denied, or why the license or permit should not be suspended or revoked. A record shall be made of the informal public hearing and documents may be submitted and/or testimony given, either in person or through sworn affidavit. This record may be made by electronic recording. The City Manager shall have the power to administer oaths and to continue the hearing from time to time to permit the applicant to provide additional information. Provided, the City Manager may designate a hearing officer to schedule, convene and conduct the public hearing. In such case, the hearing officer shall have the same powers as the City Manager to administer oaths and to continue the hearing from time to time to permit the applicant to provide additional information. Where such designation has been made, the hearing officer shall submit proposed findings and recommendations to the City Manager within twenty-one days of the close of the hearing.
3. Within twenty-eight days after the close of hearing set forth in subsection 2 above, the City Manager shall make written findings of fact and issue an appropriate order. A copy of such order shall be promptly served upon the applicant, licensee or permit holder. If the City Manager determines that the license or permit should be revoked or suspended, the suspension or revocation shall take effect immediately upon receipt unless otherwise specified.
4. The decision of the City Manager as provided in subsection 3 above shall be the final administrative action of the City with respect to the license, permit or application, and shall be subject to the immediate appeal by the licensee, permit holder or applicant to the circuit court of DuPage County. Such appeal to the circuit court shall be filed not later than thirty-five days following receipt of the City Manager's findings and order. Failure to file

such appeal as provided herein shall render the City Manager's decision final.

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#### PROHIBITED ACTS AND CONDITIONS.

1. No employee or operator shall perform, offer or agree to perform any act which would require the touching of a patron's sexual or genital area.
2. The sexual or genital areas of patrons shall be covered by towels, clothing, cloths or undergarments at all times while in a massage establishment premises.
3. It shall be unlawful for any person, knowingly, in a massage establishment to place his or her hand upon, to touch with any part of his or her body, to fondle in any manner, or to massage, a sexual or genital area of any other person.
4. No employee or operator shall administer a massage to a patron exhibiting any skin fungus, skin infection, skin inflammation, or skin eruption, unless a physician duly licensed by the State of Illinois certifies in writing that such persons may be safely massaged prescribing the conditions thereof.
5. Massage therapists, and massage establishment employees and agents, must wear clean, nontransparent outer garments fully covering the sexual or genital area.
6. Massage establishments are prohibited from advertising in ways which would suggest that employees are dressed in a way other than that allowed by this section, or that any services other than those defined by this article are available.
7. It shall be unlawful for any person to advertise themselves as a massage therapist without having a valid massage therapist permit as defined in this article.
8. Any license issued under this article shall be displayed in a conspicuous location within the customer area of a licensed establishment. Massage therapists shall wear or otherwise display in a conspicuous location within the customer area their photo identification permit cards at all times when they are performing, or holding themselves out as available to perform, any massage activities. In lieu of this display requirement, when massage services are provided at the patron's location, the photo identification permit card shall be presented to the customer before such services commence.

9. At all times during the hours of operation of a massage establishment there shall be present a manager or other employee of the license who shall be not less than eighteen years of age.
10. No massage establishment licensee shall employ as a massage therapist any person unless said person has obtained and has in effect a permit issued pursuant to this article.
11. It shall be unlawful for any person who holds a license to operate a massage establishment or a massage therapist permit within the City to fail to comply with the conditions and regulations set forth in this section or to suffer or permit noncompliance with such conditions and regulations on or within the licensed premises.
12. It shall be unlawful for any person, association, firm or corporation licensed as provided in this article to operate under any name or conduct business under any designation not specified in such license.
13. Massage may be practiced only for the purposes of physical fitness, relaxation or medical therapy. The practice of massage for any other purpose is prohibited.
14. The doors to the individual massage rooms shall not be equipped with any locking device and shall not be blocked or obstructed from either side.

26-193. PENALTY FOR VIOLATION. Any person, corporation, firm or partnership found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this article shall be punished by a fine of not less than two hundred dollars (\$200.00), nor more than fifteen hundred dollars (\$1,500.00) for each offense; and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues. In addition to any other penalty, a licensee or permittee violating any provision of this article may be subject to having their license or permit revoked, suspended or not renewed.

26-194. PREMISES RESTRICTIONS.

1. No massage establishment shall be located on any premises for which a license to sell alcoholic liquor has been issued.
2. The massage establishment premises shall be in compliance with applicable codes and ordinances of the City, including, but not limited to, zoning, building and life safety codes.

3. When any license shall have been revoked for cause, no license shall be granted to any person for the period of one year thereafter for the conduct of a massage establishment in the premises described in the revoked license.

26-195. INSPECTION OF MASSAGE ESTABLISHMENTS.

The City Manager, or his/her authorized designee, shall from time to time, and at least once a year, make an inspection of each massage establishment granted a license under the provision of this article 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 license to fail to allow such inspection officer access to the premises or to hinder such officer in any manner.

26-196. GRANDFATHER CLAUSE.

1. Any massage establishment or message therapist which has conducted massage therapy business within the City of Wheaton for at least five (5) years prior to the effective date of this Article shall be qualified to secure a provisional massage establishment license or massage therapy permit under this Article provided that the message establishment or therapist:
  - 1.1 Submits a massage license or permit application within sixty (60) days of the effective date of this Article; and
  - 1.2 The massage establishment or massage therapist satisfies all requirements of this Article except those set forth in sections 26-182(3)(3.1-3.3).
2. A provisional massage establishment license or a provisional massage therapy permit will be effective for a period of one (1) year from the effective date of this Article and may be renewed for up to a maximum of two (2) additional years provided that the provisional licensee or permittee demonstrates to the City Clerk by appropriate documentation that reasonable steps are being undertaken to satisfy the requirements of sections 26-182(3)(3.1-3.3).
3. All requirements as set forth in this section must be met before a provisional license or provisional permit will be granted and such licenses and permits will not be available upon the expiration of the time limitations as contained in subparagraphs 1.1 and 2 of this section.

4. After issuance of a provisional license or a provisional permit, the licensee or permittee shall be subject to all terms and conditions of this Article.

SECTION 2: All ordinances or parts thereof in conflict with the provisions of this ordinance are, to the extent of such conflict, expressly repealed.

SECTION 3: This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

ATTEST:

Emily M. Conzelmann  
City Clerk

James Carr  
Mayor

Ayes:

Roll Call Vote:  
Councilwoman Davenport  
Councilman Eckhoff  
Councilman Gresk  
Mayor Carr  
Councilman Johnson  
Councilwoman Johnson  
Councilman Mork

Nays:

None

Absent:

None

Motion Carried Unanimously

Passed: January 4, 1999  
Published: January 5, 1999