

ORDINANCE NO. F-0985

AN ORDINANCE AMENDING CHAPTER 26, BUSINESSES,
ARTICLE VII, MASSAGE BUSINESSES

WHEREAS, the State Legislature enacted legislation which establishes regulatory authority and licensing provisions for all persons who seek to practice Massage Therapy effective January 1, 2005; and

WHEREAS, all persons who seek to practice Massage Therapy will apply for their licensing through the State Massage Licensing Board; and

WHEREAS, the Corporate Authorities of the City of Wheaton heretofore required persons who sought to practice Massage Therapy or operate a Massage Business to apply for licensure through the municipality; and

WHEREAS, the Corporate Authorities of the City of Wheaton desire to continue the practice of licensing Massage Businesses as such regulation is in the interest of public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Wheaton, DuPage, Illinois, that Chapter 26 (Businesses), Article VII (Massage Establishments and Massage Therapists), Section 26-178 through 26-196, of the Wheaton City Code, 1996 as amend, are hereby repealed and rescinded in their entirety, and replaced with a new Article VII to be entitled "Massage Businesses", Sections 26-178 through 26-194, which shall read as follows:

"Section 1: Sec. 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 business. A corporation, partnership, limited liability company (LLC), or business 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, and is not owned by a licensed massage therapist as defined by the laws of the State of Illinois. For purposes of

corporations, partnerships, and limited liability company, an owner is defined as any one person who owns fifty-one percent (51%) of the corporation, partnership or limited liability company.

Massage therapist. Any person who performs a massage as herein defined.

Owner. Any person or legal entity who owns twenty percent (20%) or greater interest in a "Massage business".

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.

Sec. 26.179. License or permit required.

(a) It shall be unlawful for any Massage business to operate 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 business location regardless of whether such multiple businesses are operated by the same corporation, partnership, limited liability company or business. All massage therapists employed in such businesses must be licensed by the state and meet the state standards for massage therapists.

Sec. 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 businesses.

(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 business 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 that a valid, unrevoked state Massage Therapist License shall be required for the individual massage therapist performing massage activities in such exempted business.

(5) Where massage services are actually performed at the patron's premises, including the patron's place of business or residence, a Massage business license shall not be required for such patron's premises. Provided, a valid, unrevoked state Massage Therapist License shall be required for the massage therapist performing massage activities in such patron's premises.

(6) Further, the exemptions included in the State Statutes are hereby adopted by reference as though fully set forth herein.

Sec. 26-181. Application for Massage business license.

A Massage business is required to obtain a license to operate a Massage business and 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, driver's license number, and age of the applicant and all owners.

(2) The location of the Massage business.

(3) For the owners of twenty percent (20%) or more interest in any Massage business, such listing shall include:

- a. Any offense involving sexual misconduct with children or other sex offenses as defined in Article II of the Criminal Code of 1961, as amended.
- b. 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
- c. 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
- d. 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 business, 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 Massage 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 26-185.

(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 any owner or herself for fingerprints to be taken by the City of Wheaton Police Department. Applicant (or any owner) shall pay the fingerprint fee as provided in Section 26-185(b) for each person required to submit fingerprints.

(11) Two passport size photographs (1 inch by 1.5 inches) of the applicant and owners (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.

(12) The identity and address of a manager or owner designated by the Massage business to receive any notice provided for in the Ordinance.

Sec. 26-182. Application processing.

(a) An application shall not be considered proper or filed until all information and material required of the applicant pursuant to section 26-181 have been submitted.

(b) Upon receipt of a proper application, the City Clerk shall investigate the information contained in the application and shall determine whether the applicant, owners and the premises designated, if applicable, are in compliance with applicable state and local laws.

(c) The investigation, including inspections and background checks, shall be completed within 30 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.

(d) 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.

(e) If, within ten business days, following completion of the investigation, the city clerk determines that the applicant, owners, and/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 26-190. Such denial shall be final and effective on the 11th day following mailing of the notice by the City Clerk. The fee paid by the applicant pursuant to section 26-185(a), shall be returned, less \$50.00 which will be retained as a processing fee. Any fees paid by the applicant pursuant to section 26-185(b) shall be retained as a processing fee.

Sec. 26-183. Transfer changes in ownership or management.

(a) 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 26-193 of this article. A fee of \$50.00 shall be required for processing such location changes.

(b) Any permit issued pursuant to this article shall be applicable only for the specific business designated, and may not be sold, transferred or otherwise assigned, except where ownership of the business remains identical.

(c) A transfer in the ownership or control of a Massage business 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 prior to such transfer taking effect. Any transfer in the ownership of a Massage business in violation of this Section shall constitute operation of such business without a license.

(d) Notice shall be provided prior to any change of the designated manager conducting business for the Massage business license. The new manager shall be qualified to operate the Massage business as provided in Section 26-184. 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.

Sec. 26-184. Limitation on issuance and renewal of license or permit.

No Massage business license shall be issued or renewed as follows:

- (1) To an applicant or owner who has been convicted of the following offenses:
 - a. Any offense involving sexual misconduct with children or other sex offenses as defined in Article II of the Criminal Code of 1961, as amended.
 - b. 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
 - c. 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
 - d. 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.
- (2) To an applicant or owner whose license issued under this article has been revoked for cause.
- (3) To an applicant or owner who at the time of application for renewal of any license issued hereunder would not be eligible for such license or permit upon a first application.
- (4) To an applicant or owner under the age of 18 years of age.
- (5) To an applicant or owner where grounds for revocation exists as provided under section 26-189.
- (6) In addition to the provisions stated above, no Massage business license shall be issued or renewed as follows:
 - a. 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.
 - b. To any applicant or owner whose place of business is conducted by a manager unless the manager possesses the same qualifications required by the licensee.
 - c. To an applicant or owner who is not a beneficial owner of the business to be operated by the licensee.

Sec. 26-185. Fees.

(a) The fee for a Massage business license required by section 26-179(a) shall be \$100.00 and such license shall be valid for two years from July 1 to June 30 of the second year.

(b) 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 article.

Sec. 26-186. Expiration of license and renewal.

(a) Each license shall expire every two years on June 30 and may be renewed only by making application as provided in section 26-181. Provided, in lieu of full submittal, an applicant or owner 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 26-182. Application for renewal should be made at least 30 days before the expiration date, and when made at least 30 days before the expiration date, the expiration of the license will not be affected. Renewal applications for Massage business licenses shall be obtained from the City Clerk's office.

(b) When the City Clerk denies renewal of a license as provided for in section 26-184, the applicant or owner 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 has been corrected or abated, the applicant or owner may be granted a license.

Sec. 26-187. Massage business facilities.

No license, or renewal thereof, shall be issued to conduct a Massage business unless an inspection, conducted not less than once each year, discloses that the business 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 business 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 business.

Sec. 26-188. Notice of revocation, suspension or refusal of a license.

No license shall be revoked, suspended, or refused until the applicant or license holder has received written notice from the City Clerk. The notice shall set forth the allegations of why the license 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 license holder representative identified in the application. The license holder shall notify the City within 48 hours of any change in the name or address of its representative. In the event the license holder representative 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.

Sec. 26-189. Revocation or suspension of a license.

The license of a Massage business may be revoked or suspended, in addition to the fines provided for in section 26-192 herein, upon one or more of the following grounds:

- (1) The license holder has committed an act(s) of fraud or deceit in the application for license, or renewal thereof, submitted to the city clerk.
- (2) The license holder 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 license holder 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 license holder has committed an act(s) of prostitution, sexual offense, or trafficking in controlled substances after the date of issuance of a massage establishment license.
- (5) The license holder is found to be in violation of any section of this article.
- (6) The license holder 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 license holder 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 license holder has violated or is not in compliance with section 26-191 of this article and the license has been suspended within the preceding 24 months.

(9) A license holder knowingly conducted massage activities in the City during a period of time when the license holder's license was suspended.

(10) Within a 24-month period, a person or persons committed an offense as listed in section 26-184(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 license holder 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 license holder is delinquent in payment to the City for ad valorem taxes or other taxes related to the massage therapy business.

Sec. 26-190. Hearing.

(a) Any applicant, owner or license 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 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, 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.

(b) When any applicant licensee 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 or licensee an opportunity to show cause why the application should not be denied, or why the license 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 21 days of the close of the hearing.

(c) Within 28 days after the close of hearing set forth in subsection (b) 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 or license holder. If the City Manager determines that the license should be revoked or suspended, the suspension or revocation shall take effect immediately upon receipt unless otherwise specified.

(d) The decision of the City Manager as provided in subsection (c) above shall be the final administrative action of the City with respect to the license or application, and shall be subject to the immediate appeal by the licensee or applicant to the Circuit Court of DuPage County. Such appeal to the circuit court shall be filed not later than 35 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.

Sec. 26-191. Prohibited acts and conditions.

(a) No employee or operator of a Massage business shall perform, offer or agree to perform any act which would require the touching of a patron's sexual or genital area.

(b) The sexual or genital areas of patrons shall be covered by towels, clothing, cloths or undergarments at all times while in a Massage business premises.

(c) It shall be unlawful for any person, knowingly, in a Massage business 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.

(d) 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.

(e) Massage business employees and agents, and massage therapists must wear clean, nontransparent outer garments fully covering the sexual or genital area.

(f) Massage business 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.

(g) Any license issued under this article shall be displayed in a conspicuous location within the customer area of a licensed business. Massage therapists shall display in a conspicuous location within the customer area their State of Illinois License at all times when they are performing, or holding themselves out as available to perform, any massage activities.

(h) At all times during the hours of operation of a massage business there shall be present a manager or other employee of the license holder who shall be not less than 18 years of age.

(i) No Massage business license holder shall employ as a massage therapist any person unless said person has obtained and has in effect a license issued by the State of Illinois.

(j) It shall be unlawful for any business which holds a license to operate a Massage business 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.

(k) It shall be unlawful for any business licensed as provided in this article to operate under any name or conduct business under any designation not specified in such license.

(l) 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.

(m) 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.

Sec. 26-192. 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 \$200.00, nor more than \$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 license holder violating any provision of this article may be subject to having their license revoked, suspended or not renewed.

Sec. 26-193. Premises restrictions.

(a) No Massage business shall be located on any premises for which a license to sell alcoholic liquor has been issued.

(b) The Massage business premises shall be in compliance with applicable codes and ordinances of the City, including, but not limited to, zoning, building and life safety codes.

(c) 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 business in the premises described in the revoked license.

Sec. 26-194. Inspection of massage businesses.

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 business granted a license under the provisions 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 holder to fail to allow such inspection officer access to the premises or to hinder such officer in any manner."

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 on January 1, 2005 after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

ATTEST:


City Clerk


Mayor

Roll Call Vote:

Ayes:

Councilman Mouhelis
Councilman Bolds
Councilwoman Corry
Councilman Johnson
Mayor Carr
Councilwoman Johnson
Councilman Mork

Nays:

None

Absent:

None

Motion Carried Unanimously

Passed: December 20, 2004
Published: December 21, 2004