

ORDINANCE NO. F-1716

AN ORDINANCE AMENDING ARTICLE VII "MASSAGE BUSINESSES", SECTIONS 26-178 THROUGH 26-195 OF THE WHEATON CITY CODE

WHEREAS, Illinois Revised Statutes 225 ILCS 57/25(g) exempts "practitioners of Asian Bodywork Approaches from the licensing requirements of the Illinois Massage Licensing Act 225 ILCS 57/1 et seq. so long as the practitioner is a member of the American Organization of Bodywork Therapies of Asia or as a certified practitioner approved by an Asian bodywork organization based upon a minimum level of training, demonstration of competency, and adherence to ethical standards set by their governing body; and

WHEREAS, the City of Wheaton based upon research, law enforcement investigations and materials presented to the Wheaton City Clerk has concluded that there is evidence that the Asian bodywork approaches exemption set forth in 225 ILCS 57/25 is being used, in some instances, by businesses and persons who are not bona fide practitioners of Asian bodywork approaches but for the purposes of conducting unlawful sexual activities for a consideration; and

WHEREAS, the Illinois Department of Professional Regulations has opined that the exemption under 225 ILCS 57/25(g) of the Illinois Massage License Act, does not limit the ability of a home rule municipality to regulate the practitioners of Asian bodywork approaches. A copy of said opinion being attached to this Ordinance as Exhibit 1; and

WHEREAS, the use of the Asian bodywork approaches by non bona fide practitioners of Asian bodywork approaches to promote unlawful sexual activities is inconsistent with the public health, safety and welfare of the citizens of the City of Wheaton; and

WHEREAS, the Corporate Authorities of the City of Wheaton find that the non Asian body work exemptions set forth in 225 ILCS 57/25 are more easily identified as bona fide and have not been subject to the same sexual misconduct abuses as the Asian body work exemption; and

WHEREAS, the City Council has determined that the amendments to this Article VII set forth in this Ordinance will reduce the probability that the Asian bodywork approach exemptions set forth in State Statute will be used to promote illegal sexual activities while protecting lawful providers of Asian bodywork approaches; and

NOW THEREFORE BE IT ORDAINED, by the Mayor and City Council of the City of Wheaton pursuant to its home rule authority, that Article VII "Massage Businesses" Section 26-178 through 26-195 of the Wheaton City Code is hereby repealed in its entirety and replaced with a new Article VII "Massage Businesses" Section 26-178 through 26-197 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. For purposes of corporations, partnerships, and limited liability company, an owner is defined as any one person who owns 51 percent of the corporation, partnership or is a member or manager of a limited liability company.

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

Owner: Any person or legal entity who owns 20 percent 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.

- (1) It shall be unlawful for any for any massage business to operate in the City without a valid and current business license 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 multiple businesses are operated by the same corporation, partnership, limited liability company or business. All massage therapists employed in such businesses shall be licensed by the state and meet the state standards for massage therapists. A business or practitioners offering Asian bodywork approaches shall require a City massage business license. A person offering or practicing Asian bodywork approaches shall have an Asian bodywork approach exemption certificate issued by the City as described in Section 26-180.
- (2) It shall be unlawful for any City licensed massage business or individual massage therapist licensed and operating under the State Massage License Act, to employ, hire, sublease or allow at any location where massage is performed, any practitioner of Asian bodywork approaches to perform or provide any Asian bodywork approach or any massage on the licensed massage premise operated by the business or the

licensed individual therapist unless the practitioner of Asian bodywork approach is licensed under the State Massage Act in another licensed therapeutic massage discipline or possesses a current Asian bodywork approach exemption certificate issued by the City.

Sec. 26-180. Asian Bodywork Approach Exemption Certificate:

No person offering or providing Asian bodywork approaches shall perform a massage or any Asian bodywork approach without a State massage license issued in an area of massage other than Asian bodywork approach or a current valid Asian bodywork approach exemption certificate issued by the City.

Sec. 26-181. 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 barbery, 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 operated by a single massage therapist licensed pursuant the State License Massage Act 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 or Asian bodywork approach exemption certificate issued by the City shall be required for the massage therapist performing massage activities in such patron's premises.

Sec. 26-182. Application for massage business license.

All massage businesses required to obtain a business license to operate a massage business 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 20 percent 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 or Asian bodywork practitioners, 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 26-187.
- (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. Applicant (or any owner) shall pay the fingerprint fee as provided in section 26-188(c) 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.

- (12) The identity and address of a manager or owner designated by the massage business to receive any notice provided for in the article.
- (13) The name of each and every employee who will perform Asian bodywork approaches on the licensed premises.
- (14) A copy of a State massage license or City Asian bodywork approach exemption certificate for each and every person performing Asian bodywork approaches on the licensed premises shall be openly displayed..

Sec. 26-183. Application for Asian Bodywork Exemption Certificate

Every person seeking a City exemption certificate to perform Asian bodywork approaches shall make an application to the City Clerk. The City Clerk shall have the right to confirm any of the information asked for or provided in the applications. 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.
- (2) The location where the Asian bodywork approach will be performed.
- (3) The Asian bodyworks exemption certificate fee as provided in section 26-188.
- (4) Business, occupation, or employment of the applicant for five years immediately preceding the date of application.
- (5) Fingerprints for running a background check by the Wheaton Police Department.
- (6) 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.
- (7) Certification from the American Organization of Bodywork Therapies of Asia or other Asian bodywork organization certifying or approving the applicant as a practitioner of Asian Bodyworks. The information for

the American Organization of Bodywork Therapies of Asia or other American Organization of Bodywork Therapies of Asia shall include:

- (a) The name, address, telephone number and e-mail address of the Asian bodywork approach school;
- (b) The name of all faculty members of the Asian bodywork school who provided education or training to the applicant including those teachers Asian bodywork certifications, experience and educational background;
- (c) The Applicant shall provide a copy of their school transcript which shall include identification of all courses taken, the number of hours for those courses, a passing grade for all those courses, a copy of their tuition bill, and proof of payment of tuition.
- (d) A copy of the ethical standards of the school or Asian bodywork organization.

(8) No certification or approval from an Asian bodywork approach school shall be accepted by the City Clerk if all or a portion of the credits used for the certification of the applicant were earned in a country other than the United States of America.

(9) No Asian bodywork approach exemption certificate shall be issued by the City Clerk unless the City Clerk independently verifies in writing from the Asian bodywork approach school that the applicant has successfully completed the requirements of the Asian bodywork approach school's program and that the documents required by subsection 7 of this Section 26-183 are true and correct.

(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, or that the Asian bodywork organization or school has not verified the accuracy of the documents required by subsection 7 of Section 26-183 are true and correct, the City Clerk may deny the certificate of exemption. The City Clerk shall notify the applicant of the reasons for the denial in writing. The applicant shall have the right to establish the bona fide nature of the licensure or certification in writing.

26-184: Proof of exemption excluding Asian bodywork exemptions.

Any person or entity seeking a City business license for the operation of a business which offers services defined by this section as a massage, but claiming an exemption under 225 ILCS 57/25, other than an Asian body work exemption which shall be subject to Section 26-183 of this Article, , or seeking to maintain a business license after it has been granted such exemption, or seeking a business license shall provide, in conjunction with its license application or upon request by the City Clerk, information establishing the qualification for an exemption, which information shall include:

- (1) Where applicable identification of the section of 225 ILCS 57/25 under which exemption sought.
- (2) Documents establishing that the business and any person proposing to practice under an exemption business satisfies the criteria for an exemption license including, but not limited to:
 - a. Documents showing the name, address telephone number, and e-mail address of the organization, association or school issuing the licenses or certificates to the persons employed by the business as well a copy of its curriculum; and
 - b. Documents from the organization, association or school issuing the licenses or certificates establishing the minimum level of training, testing and ethical standards set by the governing body of the organization or association; and
 - c. The name and address of the governing body of the organization, association or school; and
 - d. Proof that the person asserting the exemption has completed the level of training, demonstrated competency, and adherence to ethical standards by records of the governing association establishing the practitioner's attendance at the program, including the date the practitioner began training; the date of completion of the practitioner's training program; proof of payment of the practitioner's tuition, and the identity including the name, business address, website address, and telephone number(s) for the faculty, testers or other persons involved in the training, testing and establishment of ethical standards of their school

or governing body and the name and address of the governing body; and.

- e. Any licenses or certificates for each practitioner; and
- f. Such other information as maybe reasonably required by the City to establish the accuracy and legitimacy of the other information provided pursuant to this section; and.
- g. Written certification that the documents provided pursuant to these provisions are true and correct; and
- h. The burden of seeking an exemption shall be on the applicant.

(3) At the time of and after the City issues a business license under this section, it shall be the obligation of the licensee to provide the City with all of the information set forth in this section for each new or different practitioner claiming an exemption prior to the time that person commences work at the licensed premises.

Sec. 26-185. Application processing.

- (a) An application shall not be considered proper or filed until all information and material required of the applicant has been submitted to the City Clerk.
- (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 or where the City Clerk's work load associated with the number of applications submitted under the Article makes the processing of the application impractical. 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 or certificate of exemption.

(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 exemption certificate has been denied, setting forth the reasons therefore, and advising the applicant of his or her right to a hearing pursuant to section 26-192. 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 26-188(a), shall be returned, less \$50.00 which will be retained as a processing fee. Any fees paid by the applicant pursuant to section 26-188(c) shall be retained as a processing fee.

Sec. 26-186. Transfer changes in ownership or management.

(a) Any massage business license or certificate of Asian bodywork approach exemption issued pursuant to this Article shall be applicable only to the specific licensee and location designated, or the exempt person 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 this article. A fee of \$50.00 shall be required for processing such location changes.

(b) Any license or certificate 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, extinguished and void. A new application and license shall be filed and processed as provided in sections 26-185 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) No massage business, single massage therapist, practitioner or person issued an Asian bodywork approach exemption certificate under this Ordinance shall use: the name or telephone number of a prior massage business after the transfer of ownership or

control of a massage business or any name or telephone number which is different than those in the application for the massage business license or exemption certificate issued by the City.

(e) 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 26-185. 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 26-182 of this article.

Sec. 26-187. Limitation on issuance and renewal of license or permit.

No massage business license or Asian bodywork approach exemption certificate shall be issued or renewed:

(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 five years.

(2) To an applicant, owner or agent or straw person for such 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 26-191.
- (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. 26-188. Fees.

- (a) The fee for a massage business license shall be \$100.00 and such license shall be valid for two years from the date of issuance.
- (b) The fee for an Asian bodywork approach exemption certificate shall be \$100.00 and such certificate shall be valid for one year from the date of issuance.
- (c) 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. 26-189. Expiration of Massage license and renewal.

- (a) Each massage license shall expire every two years and may be renewed only by making application as provided in section 26-182. 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 26-185. Application for renewal should be made at least 30 days before the expiration date, the expiration of the massage license will not be affected. Renewal applications for massage business licenses shall be obtained from the City's Clerk's office.

- (b) When the City Clerk denies renewal of a massage license or exemption certificate as provided for in this Article, 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.
- (c) Upon expiration of an Asian bodywork approach Exemption certificate the practitioner shall renew his/her application for an exemption certificate on a form issued by the City Clerk's office.

Sec. 26-190. 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 from 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 five years thereafter for the conduct of a massage business.

Sec. 26-191. Notice of revocation, suspension or refusal of a license.

No license or Asian bodywork approach exemption certificate shall be revoked, suspended, or refused until the applicant, license holder or Asian bodywork approach exemption certificate holder has received written notice of revocation from the City Clerk. The notice shall set forth the allegations of why the applicant, license holder or exemption certificate holder should be revoked, suspended, or refused. Said notice shall be served upon an applicant, license holder or exemption certificate holder by delivering the same personally or by delivery to the place of business or residence of the applicant, license holder or exemption certificate holder. All applicants, license holders or exemption

certificate holders shall notify the City within 24 hours of any change of address. If the service of such notice cannot be made in the manner provided herein, a copy of such notice shall be sent by regular mail, postage prepaid, to the last known address of the applicant, license holder or exemption certificate holder contained in the City's files. The revocation or suspension of a license, or exemption certificate shall be deemed effective three business days after personal service or after the mailing of the written notice as provided herein.

Sec. 26-192. 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 26-197 herein, upon one or more of the following grounds:

- (1) The license holder or Asian bodywork approach exemption certificate 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 or Asian bodywork approach exemption certificate 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 or Asian bodywork approach exemption certificate 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 or Asian bodywork approach exemption certificate 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 or Asian bodywork approach exemption certificate holder is found to be in violation of any section of this article.
- (6) The license holder or Asian bodywork approach exemption certificate 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 of trafficking of controlled substances or cannabis on the premises.

- (7) The license holder or Asian bodywork approach exemption certificate 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 or Asian bodywork approach exemption certificate holder has violated or is not in compliance with section 26-192 of this article and the license has been suspended within the preceding 24 months.
- (9) A license holder or Asian bodywork approach exemption certificate 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 26-186(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 or Asian bodywork approach exemption certificate holder is delinquent in payment to the City for ad valorem taxes or other taxes related to the massage therapy business.

Sec. 26-193. Hearing.

- (a) Any applicant, owner, license holder or Asian bodywork approach exemption certificate 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 or Asian bodywork approach exemption certificate holder 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 suspended or revoked. A record shall be made of the public hearing and documents may be submitted and/or testimony given, either in person or through sworn affidavit. The Illinois Code of Civil Procedure shall not be applicable to such hearing. Hearsay may be admissible so long as the hearing officer determines that it bears an indicia of reliability and so long as the rules associated with hearsay are equally applied to all participants in the hearing. 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) Any violation of this ordinance or unlawful act of any employee of a licensed massage business committed on a licensed premises shall be attributable to the licensed massage business.
- (d) 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, license holder or Asian bodywork approach exemption certificate 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.
- (e) 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, applicant or Asian bodywork approach exemption certificate holder 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. 26-194. Prohibited acts and conditions.

- (a) No employee or operator of a massage business or holder of an Asian bodywork approach exemption certificate 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, non-transparent outer garments fully covering the sexual or genital area.
- (f) Massage businesses are prohibited from advertising in ways which would suggest that employees are dressed in a way other than that allowed in this section, or that any services other than those defined by this article are available.
- (g) Any license or Asian bodywork approach exemption certificate 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 or a person holding an Asian bodywork approach exemption certificate 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.
- (n) The doors which customers use for egress and ingress to any massage business shall not be locked during regular business hours. For purposes of this section regular business hours shall be considered anytime in which massage is being offered on a licensed premises.
- (o) No person providing a massage shall escort the person receiving the massage from the customer or patrons parked vehicle into the premises where the massage is to be performed.
- (p) It shall be unlawful for any business licensed as provided in this Article to advertise or use any other business name to advertise any service which is not authorized by this Article in any manner. Internet advertisements containing unlawful advertising and listing the address of a licensed business shall be presumed to have been originated by the license holder at that address who shall bear the burden by clear and convincing evidence to establish that the advertising was not placed by the licensed business or its agent.

- (q) All persons working for a licensed business or holding and exemption certificate shall have an Illinois Drivers License or Illinois Secretary of State identification card present with them while working on a licensed premise.
- (r) Any business holding a massage therapy license shall be liable for the acts of its employees without scientor of the employee's acts. All persons offering or providing Asian bodywork approaches in any licensed massage business shall be employees of that business and not independent contractors, or sub-leasees.

Sec. 26-195. Premises restrictions.

- (a) Except where a business holds a Class R liquor license, 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 a period of five years thereafter for the conduct of a massage business in the premises described in the revoked license.

Sec. 26-196. 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.

Sec. 26-197. Penalty for violation.

Any person, corporation, firm or partnership found guilty of violation, 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 \$500.00, 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.

SECTION 2: If a court of competent jurisdiction sets aside any portion of this Ordinance as unconstitutional or unlawful, it shall not affect the validity of the remainder of the Ordinance.

SECTION 3: Any ordinance which is inconsistent with this Ordinance is repealed to the extent of such inconsistency.

SECTION 4: This Ordinance shall become effective upon passage, execution by the Mayor and publication as required by law. All massage businesses or persons subject to the conditions of this Ordinance shall immediately comply with the terms and conditions of this Ordinance there specifically being no grandfathering of existing massage businesses or persons providing massages being grandfathered based upon prior practices or ordinances of the City of Wheaton.

Roll Call Vote:

Ayes: Councilwoman Pacino Sanguinetti
Councilman Scalzo
Councilman Suess
Councilman Prendiville
Councilman Rutledge
Councilman Saline
Mayor Gresk

Nays: None
Abstain: None

ATTEST:



Michael Gresk
Mayor



Thom Bawett
City Clerk

Passed: June 17, 2013
Published: June 18, 2013