

ORDINANCE NO. O-2024-06

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF WHEATON
CHAPTER 2 (ADMINISTRATION), ARTICLE V (BOARDS, COMMISSIONS AND COMMITTEES),
DIVISION 11 (HISTORIC COMMISSION) & ARTICLE X (SYSTEM OF ADMINISTRATIVE ADJUDICATIONS);
CHAPTER 6 (ALCOHOLIC BEVERAGES), ARTICLE III (RETAIL LICENSES); CHAPTER 22 (BUILDINGS AND
BUILDING REGULATIONS); CHAPTER 26 (BUSINESSES), ARTICLE VII (MASSAGE BUSINESSES) &
APPENDIX B (FEE SCHEDULE)**

WHEREAS, the City of Wheaton ("City") is an Illinois Home Rule Municipality pursuant to provisions of Article VII, Section 6 of the Illinois Constitution, and as such the City may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the subject matter of this ordinance pertains to the government and affairs of the City and its residents; and

WHEREAS, the Mayor and City Council and City Staff have carefully evaluated the City Code and believe certain amendments are appropriate.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Wheaton, Illinois by its home rule authority, that the Wheaton City Code, Chapter 26 "Businesses", Article VII "Massage Businesses", is hereby amended to provide as follows:

SECTION 1: That the following sections of Chapter 2 "Administration", Article V "Boards, Commissions and Committees", Division 11 "Historic Commission", and Article X "System of Administrative Adjudications"; Chapter 6 "Alcoholic Beverages", Article III "Retail Licenses"; Chapter 22 (Buildings and Building Regulations"; Chapter 26 "Businesses", Article VII "Massage Businesses" and Appendix B "Fee Schedule" are hereby amended as follows:

Sec. 2-323. Purpose.

The purpose of the historic commission shall be to:

- (1) Promote awareness of and advocate for the city's history and appreciation for the city's heritage among the citizens of the city; and
- (2) Provide liaison between the city and groups interested in the city's history; and
- (3) Recommend to the city council appropriate historic programs and projects; and
- (4) Inform and educate the citizens of Wheaton concerning the historic and architectural heritage of the city by publishing appropriate maps, newsletters, brochures, and pamphlets, and by holding programs and seminars; and
- (5) Offer opportunity for property owners, owner initiated, to have their properties recognized and identified as historically and architecturally significant properties, structures, and areas.

(Ord. No. O-2022-34, § 1, 8-15-2022)

SECTION 2: That the following sections of Chapter 2 "Administration", Article X "System of Administrative Adjudications" are hereby amended as follows:

Sec. 2-575. Establishment.

- (a) Pursuant to the authority conferred by Division 2.1 of the Illinois Municipal Code (65 ILCS 5/1-2.1-1 *et seq.*), the Illinois Constitution, and the city's home rule authority, the city hereby establishes a system of administrative adjudication for the charges of municipal code violations to be administered as set forth herein.
- (b) The city hereby adopts Division 2.1 of the Illinois Municipal Code (65 ILCS 5/1-2.1-1 *et seq.*), as may be amended from time to time. In the event of conflict between said statutes and this Article, this Article shall prevail.
- (c) The adoption of this article does not preclude the city from using other lawful methods, which are hereby fully reserved, to enforce any applicable provision of the city code. The system of administrative adjudication shall function as an administrative and code hearing department and shall have the power to enforce compliance with all municipal ordinances set forth in section 2-577 of this article X and which shall be under the authority of the Administrative Department of the City of Wheaton.

(Ord. No. O-2021-26, § 1, 6-7-2021)

Sec. 2-576. Jurisdiction and function.

The system of administrative adjudication established herein shall have the authority to: (i) establish procedural rules and regulations consistent with due process; (ii) administer code adjudication hearings as set forth in this article for alleged violations of the city's municipal code; (iii) adjudicate such allegations; and (iv) impose penalties and orders of compliance for all municipal ordinance violations subject to the system's jurisdiction. Code violations that can be adjudicated under this article shall not only include those codes in existence at the time of the adoption of this article but shall also include new provisions in the chapters set forth in section 2-577 of this article which may be adopted after the adoption of this article.

(Ord. No. O-2021-26, § 1, 6-7-2021)

Sec. 2-577. Municipal ordinances subject to adjudication.

Municipal ordinance violations subject to adjudication under this article may include violations of any of the following Wheaton City Code provisions:

- Chapter 6, Alcoholic Beverages, Article IV
- Chapter 10, Amusements and Entertainments, Articles I-IV and VI
- Chapter 14, Animals, Articles I-IV
- Chapter 22, Buildings and Building Regulations, Articles I-XVII
- Chapter 26, Businesses, Articles I-VII and Article X
- Chapter 30, Fire Prevention and Protection, Articles I, IV, VI, and VII
- Chapter 34, Stormwater Management Regulations, Article V
- Chapter 36, Health and Sanitation, Section 36-30(b)
- Chapter 42, Offenses and Miscellaneous Provisions, Articles I-IV
- Chapter 46, Peddlers and Solicitation, Articles I-VI
- Chapter 54, Solid Waste, Articles I, III, and IV

Chapter 58, Street, Sidewalks, and Other Public Places, Article I-VII

Chapter 70, Traffic and Vehicles, Articles I-VII

Chapter 74, Utilities, Articles I-V

Chapter 78, Vegetation, Articles I-IV

Wheaton Zoning Ordinance as follows:

Article III, Zoning District and General Regulations

Article IV, Scope of Regulations

Article VI, Landscape Requirements

Article VII, R-1 Residential District

Article VIII, R-2 Residential District

Article IX, R-3 Residential District

Article X, R-4 Residential District

Article XI, R-5 Residential District

Article XII, R-6 Residential District

Article XIII, R-7 Residential District

Article XIV, I-1 and 1-2 Institutional District

Article XV, O-R Office and Research District

Article XVI, C-1 Local Business District

Article XVII, C-2 Retail Core Business District

Article XVIII, C-3 General Business District

Article XIX, C-4 CBD Perimeter Commercial District

Article XX, C-5 Planned Commercial District

Article XXI, M-1 Manufacturing District

Article XXII, Off-Street Parking and Loading

Article XXIII, Signs

Article XXIV, Accessory Uses and Home Occupations

Article XXV, Performance Standards

Violations of ordinances governing the standing, parking, or condition of vehicles, excluding those reportable under section 6-204 of the Illinois Motor Vehicle Code.

For purposes of this ordinance when the phrase "building code" is used it shall include chapters 22, 30, and 34, of the Wheaton City Code as well as all Zoning Ordinance performance standards set forth above.

Each day that any violation of any provision which can be adjudicated under this article shall continue, shall constitute a separate offense and be subject to a daily fine.

(Ord. No. O-2021-26, § 1, 6-7-2021)

Sec. 2-578. Administrative adjudication composition.

The system of administrative adjudication of the city shall be comprised of a hearing officer, or substitute hearing officer, and may include any one or more of the following: an administrative adjudication administrator, and hearing room personnel. All members of the system of administrative adjudication shall be appointed by the city manager and shall have the powers, authority, and limitations as are herein set forth.

- (a) *Powers of the hearing officer.* The term "hearing officer" means a person or persons, other than a city law enforcement officer, or city building or fire inspector, who shall have all the powers granted to hearing officers under state law set forth in Section 1-2.1-4 of the Illinois Municipal Code, as amended, the provisions of which are incorporated herein by this reference, including the power to:
 - (1) Preside at an administrative hearing called to determine whether a code violation exists.
 - (2) Administer oaths and affirmations.
 - (3) Issue subpoenas.
 - (4) Hear testimony and accept evidence from all interested persons relevant to the existence of a code violation.
 - (5) Preserve and authenticate the record of the hearing and all exhibits and evidence introduced at the hearing.
 - (6) Issue and file a written finding, decision, and order stating: whether a code violation exists; the penalty and action with which the person found liable must comply.
 - (7) The hearing officer shall not have the authority to impose a penalty of incarceration. The hearing officer, upon a finding of a code violation, may impose any penalty set forth in section 2-588 below.
- (b) *Powers of the system of administrative adjudication administrator.* The system of administrative adjudication administrator shall be empowered and is authorized and directed to:
 - (1) Operate and manage the system of administrative adjudication in conformance with the system's regulations, fundamental due process of the law, and as directed by ordinance.
 - (2) Promulgate internal rules and regulations reasonably required to operate and maintain the system of administrative adjudication.
 - (3) Provide the city's attorney with the aforesaid rules and regulations and modify them in conformance with the direction of the city's attorney to be consistent with fundamental due process.
 - (4) Supervise the distribution and processing of notices as may be required under this article to carry out its purposes.
 - (5) Supervise the collection of monies paid and/or penalties assessed after a final determination of liability.
 - (6) Compromise or otherwise settle violation notices prior to a hearing date. However, any such compromise should be made of record by the administrative adjudication administrator on the date the violation notice was scheduled to appear for hearing, with an explanation by the administrative adjudication administrator as to the reasons for such compromise.
 - (7) Manage the operations of the system including, but not limited to:
 - (i) Input of violation notice information;
 - (ii) Establishment and service of notices of violations and hearing dates;

(iii)

- (iii) Issue hearing dates where continuances are sought and granted;
- (iv) Keep an accurate record of appearances and failures to appear at the administrative hearings;
- (v) Keep a record of pleas entered, judgments entered, penalties imposed, if any, and penalties paid or completed;
- (vi) Collection of unpaid penalties and pursuit of all post-judgment remedies available by law;
- (vii) Issue payment receipts;
- (viii) Perform such other duties as directed by the city manager; and
- (ix) Perform such other duties as are necessitated to achieve functionality and efficiency in the operation of the system of administrative adjudication.

(Ord. No. O-2021-26, § 1, 6-7-2021)

Sec. 2-579. Hearing officer qualifications.

All hearing officers shall be appointed by the city manager meeting the following mandatory qualifications prior to appointment:

- (a) Successful completion of a formal training program required by 65 ILCS 5/1-21-4(c) which includes:
 - (1) Instruction on the rules of procedure for administrative hearings;
 - (2) Orientation to each subject area of the code that will be adjudicated ;
 - (3) Observation of other administrative hearings conducted by municipalities with existing code enforcement departments; and
 - (4) Participation in hypothetical cases including ruling on evidence and issuing final orders.
- (b) Be an attorney licensed to practice law in the State of Illinois for a minimum of three years.
- (c) This appointment shall not be subject to collateral attack in an adjudicative hearing.

(Ord. No. O-2021-26, § 1, 6-7-2021)

Sec. 2-581. Code enforcement procedure.

The system of administrative adjudication shall be conducted in accordance with the following procedures to assure defendants are afforded due process of law:

- (a) Any individual authorized to issue an ordinance/code violation notice, including but not limited to full-time police officers, community service officers, code enforcement officers, code inspectors, persons retained by the city pursuant to a contract to perform ordinance/code enforcement or inspection related services, or other individual who is an employee of the city who finds a code violation shall note the violation on a multiple copy violation notice or a computer generated violation notice that shall include the following:
 - (1) The name and address, if known, of the party alleged to have violated the ordinance/code;
 - (2) A brief description of the type and nature of the alleged violation, including the code section;
 - (3) The date, time, and place of the alleged violation;

- (4) Whether the violation requires an appearance at hearing or may be prepaid without an appearance.
- (5) The penalty which may be assessed;
- (6) The name, signature, position, and any identification number of the person issuing the violation notice;
- (7) The date, time, and location of the adjudication hearing for the alleged ordinance/code violation; and
- (8) The legal authority and jurisdiction under which the hearing is to be held and the penalties for failure to appear.

(b) The correctness of the facts contained in any ordinance/code violation notice shall be verified by the person issuing the notice by, which shall establish a *prima facie* case:

- (1) Signing his/her name to the notice at the time of issuance; or
- (2) In the case of a notice being produced by a computer, signing a single certificate to be kept by the administrative adjudication administrator attesting to the correctness of all notices produced by the computer while under their control.

(c) The docketing and service of violation notices shall be made in the following manner:

- (1) The violation notice shall be forwarded to the system of administrative adjudications where a docket number shall be issued,
- (2) If a hearing date is required, it shall not be less than 30 days after the violation notice has been issued.
- (3) The violation notice shall be maintained in the files of the system of administrative adjudication and shall be part of the record of hearing.
- (4) One copy of the violation notice shall be served by first class mail to the alleged violator unless the alleged violator has been personally served with the notice of violation as an alternative to first class mail notice.
- (5) In the case of a building code or fire code violation only, if the city has an ordinance requiring property owner's compliance, service may be made personally on the owner or by mailing the violation notice to the property owner's address available to the City by routine address searches. The term "property owner" as used in this provision means the legal or beneficial owner(s) of the property.
- (6) In the case of a building code or fire code violation only, if the name of the property owner cannot be ascertained or if service on the owner cannot be made by personal service or mail, service may be made on the owner by posting or affixing a copy of the violation notice on the front door of the structure where the violation is found, not less than 20 days before the hearing is scheduled.
- (7) In the case of a violation notice alleging a parking, standing or stopping violation of a motor vehicle, the violation notice may be served by leaving a copy of the violation notice on the windshield of the motor vehicle or by handing the notice to the operator of the vehicle, if present.
- (8) Any violation notice or copy of the notice issued, signed and served in accordance herewith shall be *prima facia* correct and *prima facie* evidence of the correctness of the facts shown on the notice and shall be admissible in a subsequent administrative or legal hearing.

Sec. 2-583. Subpoenas.

At any time prior to a hearing date, a hearing officer may issue a subpoena at the request of either party directing witnesses to appear and give testimony and/or to produce relevant documents at the hearing. All costs associated with a subpoena shall be prepaid by the requesting party and shall include the cost of serving the subpoena and witness fees equal to the fee that would be provided a subpoenaed witness in a civil case if the Code of Illinois Civil Procedure was applicable.

(Ord. No. O-2021-26, § 1, 6-7-2021)

Sec. 2-584. Representation at hearings.

The case for the city may be presented by an attorney designated by the city manager or by any other city employee, except the case for the city shall not be presented by an employee assigned to the system of administrative adjudication. The case for the alleged violator may be presented by the alleged violator, an attorney, or any other agent or representative authorized to represent the alleged violator under law. Corporations, partnerships and limited liability companies shall be represented by an attorney (705 ILCS 220/1).

(Ord. No. O-2021-26, § 1, 6-7-2021)

Sec. 2-585. Administrative hearings.

An administrative hearing shall be held to adjudicate an alleged ordinance/code violation on its merits, or to contest the validity of a violation notice in accordance with the following procedures:

- (a) *Hearing time and date; limited continuances:* Hearings for all must appear and contested allegations of violation shall be held on the date, time, and place as set forth in the violation notice issued. No continuances shall be authorized by the hearing officer in proceedings under this section, except in cases where a continuance is absolutely necessary to protect the rights of the alleged violator or upon agreement of the City and alleged violator. Lack of preparation shall not be grounds for a continuance.
- (b) *Strict rules of evidence inapplicable:* With regard to testimony heard and evidence presented, the strict rules of evidence applicable in judicial proceedings shall not apply to administrative hearings, subject to the condition that hearsay shall be admissible if it is the type of hearsay that would be relied upon by people in the normal experience of their daily lives.
- (d) The burden shall be on the city to prove by a preponderance of the evidence that the alleged violation occurred.
- (e) *Defenses to building and life safety code violations:* In the cases of building code and life safety code violations only, the only defenses to the allegation of a violation shall be:
 - (1) That the violation did not exist;
 - (2) The code violation has been caused by current non-owner occupants of a property and that despite the owner's efforts to keep the property free of such violations the current occupants continue to cause the code violations;
 - (3) The occupant or resident of the dwelling has refused entry to the owner or its agent for purposes of correcting the code violation;
 - (4) In the case where the hearing officer finds the defense set forth in subparagraph 2 or 3 above, such finding shall authorize the issuance of notices of violation against the occupants of the property who upon a finding of a violation shall become liable for any penalties, compliance or action order that can be entered by the hearing officer.

(f) *Default.*

- (1) If at the time set for hearing, an alleged violator or their attorney of record or designee, fails to appear, the hearing officer may enter a default judgment of liability and impose a penalty set forth in section 2-588 below against the alleged violator.
- (2) Upon entry of a default judgment and penalty, the administrative adjudications administrator shall send, or cause to be sent, a copy of the order of default by first class mail, postage prepaid to the person who received the violation notice. Service of notices in accordance with this article shall be complete as of the date of the deposit of the order in the United States mail.
- (3) A violator against whom a default judgment has been entered may file a motion to vacate the default judgment with the city prosecutor or hearing officer and request a new hearing. Said motion must be filed on or before the date of the next regularly scheduled administrative hearing after the default judgment was entered. A motion to vacate shall set forth the reasons the violator failed to appear on the original hearing date. The hearing officer shall hear and rule on the motion. If the hearing officer grants the motion, a hearing will be held immediately on the alleged violation set forth in the violation notice unless the violator requests another hearing date and presents good cause for continuing the hearing.
- (4) A default judgment constitutes a final determination for purposes of judicial review and is subject to review under the Illinois Administrative Review Law, 735 ILCS 5/3-101, *et seq.*

(g) *Findings, decision and order.*

- (1) Upon completion of the hearing, the hearing officer shall make a determination on the basis of the presented evidence as to whether a code violation existed or exists.
- (2) The determination shall be made in writing and shall be designated as findings, decision, and order. Such determination shall constitute a final determination for purposes of judicial review and is subject to review under the Illinois Administrative Review Law, 735 ILCS 5/3-101, *et seq.*
- (3) The findings, decision and order shall include:
 - (i) The hearing officer's findings of fact.
 - (ii) The decision as to whether a code violation exists or existed based upon the findings of fact.
 - (iii) The entry of a penalty as set forth in section 2-588 below.
 - (iv) Not liable if a code violation is not proven.
- (4) A copy of the findings, decisions or order shall be served on the violator by first class U.S. mail within five days after its issued. Service shall be complete as to the date of the deposit of the first-class mail in the United States mail.

(Ord. No. O-2021-26, § 1, 6-7-2021)

Sec. 2-587. Judicial review.

The findings, decision, and order of the hearing officer shall constitute a final determination and shall be subject to the Administrative Review Law, as amended (735 ILCS 5/3-101, *et seq.*).

(Ord. No. O-2021-26, § 1, 6-7-2021)

Sec. 2-588. Penalties and judgment collection procedure.

- (a) Where a finding of a violation is made, the following penalties or a combination thereof may be imposed.

- (1) A penalty of not less than \$100.00, nor more than \$950.00, for each day the violation exists, provided however the cumulative amount of a penalty may not exceed \$50,000.00;
- (2) Remediation;
- (3) Community service;
- (4) Restitution.

- (b) If a violator has remediated a condition relating to property at the time of the administrative hearing, but is found in violation of the section at the time the violation notice was issued, the hearing officer shall impose a minimum penalty of \$20.00, unless the issuer of the violation notice, by and through the administrative adjudication administrator, requests dismissal of the matter, before the administrative hearing date.
- (c) All penalties shall be paid no later than 28 days after imposition by the hearing officer.
- (d) Any penalty, or other sanction imposed remaining unpaid after the exhaustion of, or failure to exhaust, judicial review procedures under the Administrative Review Law (735 ILCS 5/3-101, *et seq.*) shall be a debt due and owing the City collectible in accordance with applicable law.
- (e) After expiration of the period within which judicial review under the Administrative Review Law (735 ILCS 5/3-101, *et seq.*) may be sought for a final determination of a code violation, the city may commence a proceeding in the Eighteenth Judicial Circuit Court for purposes of obtaining a judgment on the findings, decision, and order. The city may consolidate multiple findings, decisions, and orders against a person in such proceeding. The determination of whether the city should commence a proceeding for purposes of obtaining a judgment for the findings, decision and orders shall be determined in the discretion of the city attorney.
- (f) Upon commencement of the action, the city shall file certified copies of the findings, decision, and order, as well as a certificate reciting sufficient facts to show the determination of the findings, decision and order was entered in accordance with this Article and applicable municipal ordinances.
- (g) Service of the summons and a copy of the petition may be by any method allowed by Illinois law provided that the total amount of the penalty imposed by the determination, findings, decision, and order does not exceed \$50,000.00, 65 ILCS 5/1-2.1-4(b)5.
- (h) The court may also issue any other orders, including injunctions, to enforce the order of the hearing officer to correct the code violation.

(Ord. No. O-2021-26, § 1, 6-7-2021)

Sec. 2-590. Prepayment before administrative hearing.

- (a) The following violations are eligible for prepayment if so indicated on the violation notice, absolving the violator with the need to appear:

| Pay by Mail |
|--|
| Chapter 6, section 6-6 underage possession or consumption |
| Chapter 6, section 6-7 parental responsibility |
| Chapter 6, section 6-8 resp. of owner or occupant |
| Chapter 6, section 6-11 caterers |
| Chapter 14, Art II; IV; VI |
| Chapter 26, Art V, Sec 26-138 |
| Chapter 30, Art I |
| Chapter 36, except for 36-30(b) |
| Chapter 42, section 42-1, (Class C or petty) |
| Chapter 42, sections 42-8, 42-9, 42-10, 42-11, 42-12, 42-16, 42-17, 42-18, 42-19, 42-20, 42-21, 42-25, 42-28, 42-30, 42-31, 42-32, 42-33, 42-106 |

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| Chapter 46 |
| Chapter 54, except for 54-45 |
| Chapter 58, sections 58-12, 58-14, 58-15, 58-19, 58-22, 58-23, 58-25, 58-26, 58-27, 58-31, 58-32, 58-33, Art VI |
| Chapter 70, as qualified below |
| Chapter 78 |

- (b) Except for handicap parking violations, violations of chapter 70 may be prepaid at a rate of \$30.00 per violation. Singular handicap parking violations in a 12-month period may be prepaid without appearance at a rate of \$350.00. Multiple handicap parking violations in a 12-month period shall be a must appear.
- (c) All other violations eligible for prepayment may be prepaid at a rate of \$75.00 per violation.
- (d) The payment for a violation eligible for prepayment must be received within 15 calendar days of the date the violation notice was issued. Failure to receive payment within the 15-day time frame will result in the violation being routed to an administrative hearing.

(Ord. No. O-2021-26, § 1, 6-7-2021)

SECTION 3: That the following sections of Chapter 6 "Alcoholic Beverages", Article III "Retail Licenses" are hereby amended as follows:

Sec. 6-83. Same—Class F licenses.

- (a) A club or nonprofit organization wishing to file an application for a Class F license may obtain a Class F license application form from the city as prescribed by the city manager. Such application shall be filed with the local liquor commissioner with a nonrefundable application fee in accordance with appendix B to this Code. The application shall be signed by an authorized representative of the applicant.
- (b) Applications for a Class F license shall be verified by oath or affidavit and shall contain the following statements and information:
 - (1) The applicant's name, mailing address, telephone number and email address.
 - (2) The president or chair of the board of directors and secretary's names, mailing addresses, and telephone numbers.
 - (3) If applicable, the date that the club was organized.
 - (4) A statement of the objects for which the club or nonprofit organization was organized, along with the full name, address, and telephone number of all the officers and directors.
 - (5) The names, dates of birth, addresses, and telephone numbers of all persons, up to a maximum of ten persons, who are members of the club or nonprofit organization and who will sell alcoholic beverages for the club or nonprofit organization at its special events during the year following the granting of the license or a renewal of the license.
 - (6) The anticipated number of permits for Class F licenses which shall be requested by the applicant in the forthcoming year. This figure shall not be binding on the applicant except as to the limitations set forth in the Class F license classification.
 - (7) The anticipated location or locations and a description of that premises where the alcoholic beverages will be sold pursuant to the Class F license.
 - (8) A statement as to whether the applicant has made similar applications for another similar license and the disposition of such applications.

- (9) A statement that none of the individuals identified in subsection (b)(5) of this section have ever been convicted of a felony or a class A misdemeanor and are not disqualified to receive a license by reason of any matter or thing contained in the laws of Illinois or any other provision of this chapter.
- (10) Whether a previous liquor license by any state or subdivision thereof, or by the federal government, has been issued to the club or nonprofit organization, and if so, where and when, or if any license has been denied or revoked, stating the reasons therefor.
- (11) A statement that the applicant and all individuals identified in subsection (b)(5) of this section have not in the past and will not in the future violate any of the laws of Illinois or the United States, or any ordinance of the city, controlling the retail sale of alcoholic liquor in the conduct of the sale of the alcoholic liquor pursuant to the Class F license.
- (12) Whether the president or chair of the board of directors of the club or nonprofit organization is a public official, and if so, the particulars thereof.
- (13) A statement that no individual person in the club or nonprofit organization will stand to gain any pecuniary benefit from the sale of alcoholic beverages pursuant to the Class F license.
- (14) A statement that the applicant and all individuals required to be identified in the application have not sold or given away alcoholic liquor in violation of any state law or city ordinance to a person under the minimum age required to purchase or possess liquor.
- (15) Such information or identification as the local liquor commissioner may deem necessary in order to establish the character of the applicant.
- (16) If the applicant is a corporation or limited liability company, a copy of its Certificate of Good Standing from the Secretary of State's Office must be submitted with the application.
- (17) For each special event allowed under a Class F license, a special event liquor license application shall be submitted to the city clerk for approval in accordance with section 6-87(6).

(Code 1968, § 3-9.1; Code 1996, § 6-83; Ord. No. F-0638, §§ 1, 6, 10-15-2001; Ord. No. O-2023-31, 5, 8-7-2023)

Sec. 6-83.5. Special event liquor license application.

- (a) A city-based nonprofit organization wishing to file an application for a special event liquor license may obtain an application form from the city as prescribed by the city manager. Such application shall be filed with the local liquor commissioner with a nonrefundable application fee in accordance with Appendix B to this Code. All special event liquor license applications shall be filed at least 90 days prior to the special event. The application shall be signed by an authorized representative of the applicant.
- (b) Applications for a special event liquor license shall be verified by oath or affidavit and shall contain the following statements and information:
 - (1) The applicant's name, mailing address, telephone number and email address.
 - (2) The president or chair of the board of directors and secretary's names, mailing addresses, and telephone numbers.
 - (3) The date that the nonprofit organization was formed.
 - (4) A statement of the objects for which the nonprofit organization was organized, along with the full name, address, and telephone number of all the officers and directors.
 - (5) The names, dates of birth, addresses, and telephone numbers of all persons who are members of the nonprofit organization and who will sell alcoholic beverages for the nonprofit organization at the special event.

- (6) A site plan and detailed description of the location of the special event and a diagram or drawing, subject to approval of the city special event review group, that illustrates entrances and exits for the special event, seating areas, food service areas, and alcohol sales area.
- (7) A statement as to whether the applicant has made similar applications for another similar license in the city or other communities and the disposition of such applications.
- (8) A statement that none of the individuals identified in subsection (b)(5) of this section has ever been convicted of a felony or a class A misdemeanor and none is disqualified to receive a license by reason of any matter or thing contained in the laws of Illinois or any other provision of this chapter.
- (9) Whether a previous liquor license by any state or subdivision thereof, or by the federal government, has been issued to the nonprofit organization, and if so, where and when, or if any license has been denied or revoked, stating the reasons therefor.
- (10) A statement that the applicant and all individuals identified in subsection (b)(5) of this section have not in the past and will not in the future violate any of the liquor laws of Illinois or the United States, or any ordinance of the city, controlling the retail sale of alcoholic liquor in the conduct of the sale of the alcoholic liquor.
- (11) Whether the president or chair of the board of directors of the nonprofit organization is a public official, and if so, the particulars thereof.
- (12) A statement stating that no individual person in the nonprofit organization will stand to gain any pecuniary benefit from the sale of alcoholic beverages.
- (13) A statement that the applicant and all individuals required to be identified in the application have not sold or given away alcoholic liquor in violation of any state law or city ordinance to a person under the minimum age required to purchase or possess liquor.
- (14) Such information or identification as the city special event review group may deem necessary in order to establish the character of the applicant.
- (15) If the applicant is a corporation or limited liability company, a copy of its Certificate of Good Standing from the Secretary of State's Office must be submitted with the application.
- (16) All applicants shall submit a detailed description of the special event that explains how access to the alcohol sales and consumption areas will be controlled, the method of verifying the age of individuals attempting to purchase alcohol, the estimated number of persons attending the event, the manner in which alcohol will be dispensed and consumed, whether any entertainment will be provided in conjunction with the event, what food products will be sold, and how the applicant will protect against violations of the city's ordinances.

(c) Existing Class A, B or I licensees may file an application for a special event liquor license.

(Code 1996, § 6-83.5; Ord. No. F-0407, § 2, 11-15-1999; Ord. No. F-0638, §§ 1, 7, 10-15-2001; Ord. No. F-1924, § 1, 3-21-2016; Ord. No. O-2023-31, 5, 8-7-2023)

Sec. 6-87.5. Special event liquor license.

- (a) For city-based nonprofit organizations, the special event liquor license shall authorize the sale of alcoholic liquor on a specified premises for a maximum period of five consecutive days in conjunction with a special event as defined in section 10-4. For existing Class A, B or I licensees, the special event liquor license shall authorize the sale of alcoholic liquor on a specified premises for a maximum period of one day each calendar year.
- (b) All applications for a special event liquor license shall be made pursuant to the provisions of section 6-83.5. Applications for a special event liquor license shall be made with the submission of the application for the

special event permit. The processing of all special event liquor license applications shall be according to the procedures in section 6-86.

- (c) The retail sale and consumption of alcoholic liquor authorized by a special event liquor license shall be limited to: the downtown Wheaton area as defined as Seminary Avenue to the north, Naperville Road to the east, Illinois Street to the south, and West Street to the west; the DuPage County Fairgrounds property; the Central Athletic Complex or Cosley Zoo.
- (d) Upon final approval by the local liquor commissioner, the special event liquor license shall be granted only for the dates and type and quantity of alcoholic liquor specified in the application.
- (e) City-based nonprofit organizations shall apply for a special event permit pursuant to section 10-6 prior to the local liquor commissioner approving and issuing any special event liquor license.
- (f) All persons who sell alcoholic liquor for a special event liquor license held by a city-based nonprofit organization shall complete the city police department's online alcohol sales training program. Completion of the training session will qualify a special event bartender for three years.
- (g) Prior to issuance of a special event liquor license, the applicant shall submit a certificate of insurance as required by section 6-93. In addition to the insurance required by section 6-93, if a special event is held wholly or in part on any city property, the applicant shall obtain liability insurance for the special event with minimum coverage of not less than \$2,000,000.00 for bodily injury and \$2,000,000.00 for property damage. The applicant shall provide a certificate of insurance to the city and shall name the city as an additional insured. This certificate shall cover the entire time for which the special event license is issued.
- (h) The licensee shall maintain the premises in a neat, orderly and safe condition, shall provide such traffic control and sanitation facilities as may be required by the city special event review group to protect the public health, safety, and welfare of the residents of the city, and shall restore the premises after expiration of the license to its prior condition, including the removal of trash, rubbish, and garbage. No alcoholic liquor shall be brought onto the premises or consumed on the premises other than that provided by the licensee under the terms and conditions of the special event liquor license.
- (i) The applicant shall contract with the city police department for city services by having at least two off-duty officers present at the special event at all times during the hours of operation. In the city's discretion, the city special event review group may require that the applicant contract for additional city services based on the size, location, and the anticipated number of persons attending the special event. Fifty percent of the estimated cost of these services shall be paid to the city prior to the issuance of a special event license. The balance, reflecting the actual cost of city services provided shall be due within 30 days of invoicing. The city services required under this provision shall not be subject to a waiver of fees as described in section 10-16(d).

(Code 1996, § 6-87.5; Ord. No. F-0638, § 14, 10-15-2001; Ord. No. F-0794, § 1, 3-17-2003; Ord. No. F-1773, § 1, 4-21-2014; Ord. No. F-1903, §§ 3, 4, 12-7-2015; Ord. No. F-1924, § 2, 3-21-2016; Ord. No. O-2018-48, § 1, 8-20-2018; Ord. No. O-2019-11, § 1, 3-18-2019; Ord. No. O-2021-23, § 1, 5-17-2021; Ord. No. O-2021-44, § 1, 9-7-2021; Ord. No. O-2023-31, 5, 8-7-2023)

Sec. 6-89. - Limitation on number of licenses.

The city council may limit the number of liquor licenses authorized for all classifications defined in Section 6-87. Authorized and valid licenses on file with the city clerk shall determine the number of liquor licenses by classification.

SECTION 4: That rather than setting forth the entire text of the following sections of Chapter 6 "Alcoholic Beverages", Article III "Retail Licenses" and Chapter 10 "Special Events, Amusements, and Entertainments", Article II "Special Events", the following sections shall be amended in an omnibus

fashion by deleting "outdoor" wherever it appears before "special event": Section 6-5(a); Section 6-82(a); Section 6-86(d) & (f); Section 6-129(11); and Section 10-16(d).

SECTION 5: That the following sections of Chapter 22 "Buildings and Building Regulations" are hereby amended as follows:

Sec. 22-3. Violations; penalties.

(a) Any person who violates or fails to comply with any provision of the codes adopted or amended in chapter 22, buildings and building regulations, or any directive of the director of building and code enforcement of the city or of any permit, or certificate issued under the provisions of such codes shall be guilty of an offense punishable by a fine as set forth in section 1-8 and/or section 2-588 of this code. Each day that violations continue shall be deemed a separate offense for each violation.

In addition to the penalties set forth herein, all such persons shall correct or remedy such violations within a reasonable time. The imposition of a penalty for any violation shall not excuse the violation or permit it to continue.

(Ord. No. O-2020-05, § 1, 2-3-20)

Sec. 22-16. Permit Required.

(a) Any owner and/or owner's authorized agent who intends to perform any work requiring a permit under any provision of this chapter shall be responsible for obtaining the applicable permit. Prior to the commencement of any work, an owner shall ensure that permits have been issued. All other provisions of this Code pertaining to an owner's obligation to obtain permits shall remain in full force and effect. The owner and the owner's agent responsible for obtaining a permit shall be jointly and severally liable if work which requires a permit is performed without a permit.

(b) An application for a permit shall include the full name, street address other than a post office box, cell phone number and/or a land-based phone number, and email address for both the owner and owner's agent. In the case of a contractor, the City contractor ID may be used.

(Ord. No. O-2020-05, § 1, 2-3-20)

Sec. 22-24. Contractor Registration

All general, electrical, mechanical, plumbing, fire alarm, fire sprinkler, heating and air conditioning, roofing, elevator, irrigation, and right-of-way contractors are required to be registered with the City of Wheaton.

Application for Contractor Registration should be submitted to the Building Department and include the following:

- 1) A completed Contractor Registration application.
- 2) Copies of any State or local licenses required pursuant to section 22-19.
- 3) Payment of the Contractor Registration fee per Appendix B to this Code.

Secs. 22-25—22-29. Reserved.

SECTION 6: That the following sections of Chapter 26 "Businesses", Article VII "Massage Businesses" are hereby amended as follows:

Sec. 26-178. Definitions.

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

City means the City of Wheaton.

Employee means any person who works in or at, or renders any services directly related to the operation of a massage business. Employee includes a massage therapist.

License means a massage business license issued by the City of Wheaton.

Licensed premises means the place or location described in a license where a massage business is authorized to operate.

Licensee means the entity or person who holds a license for a massage business.

Massage means any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating of the external soft parts of the body with 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 person's behalf, will pay money or give other consideration or any gratuity therefor.

Massage business means any business entity in any form, including but not limited to any corporation, partnership, limited liability company (LLC), joint venture, sole proprietorship, association or any other form 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 the above-described activities occur.

Massage therapist means any person who performs a massage.

Owner means any person or legal entity who owns 20 percent or greater interest in a massage business.

Patron means any person who receives a massage under such circumstances that it is reasonably expected that he will pay money or give other consideration therefor.

Reflexology means the application of steady, deep and light pressure over the feet for the purpose of producing healing and relaxation in all parts of the body.

Sexual or genital area means the areas of the body including the genitals, pubic area, anus or perineum of any person, or the vulva or breasts of a female.

Specified Criminal Act means any unlawful lewd, indecent, or immoral conduct, including but not limited to, any acts specified in any of the following statutes, as may be amended from time to time:

1. Article II of the Illinois Criminal Code (sex offenses).
2. Section 26-4 of the Illinois Criminal Code, 720 ILCS 5/330 (unauthorized videotaping).
3. Section 33D-1 of the Illinois Criminal Code, 720 ILCS 5/330-1 (contributing to the criminal delinquency of a juvenile).
4. The Harassing and Obscene Communications Act, 720 ILCS 5/26.5 *et seq.*
5. The Wrongs to Children Act, 720 ILCS 150/0.01 *et seq.*
6. The Sale of Immoral Publications to Children Act, 720 ILCS 670/0.01 *et seq.*
7. The Illinois Controlled Substance Act, 720 ILCS 570/100 *et seq.*

Specified Sexual Activities means any of the following:

1. Fondling or other erotic touching of the sexual or genital area.
2. Sex acts, actual or simulated, including intercourse, oral copulation or sodomy.
3. Masturbation, actual or simulated.
4. Human genitals in a state of sexual stimulation or arousal.

State means the State of Illinois.

Transfer of ownership or control of a massage business means any of the following:

1. The sale, lease or sublease of the business.
2. The transfer of securities or stock which constitutes a controlling interest in the business, whether by sale, exchange or similar means.

3. The establishment of a trust, gift or other similar legal device which transfers the ownership or control of the business.
4. Any person not previously listed as an applicant acquires an ownership interest in the business of twenty percent or more.

(Code 1996, § 26-178; Ord. No. F-1716, § 1, 6-17-2013; Ord. No. O-2022-26 , § 1, 6-6-2022)

Sec. 26-179. License required.

- (a) A license shall be required to establish, operate or maintain a massage business within the City. A separate license shall be required for each massage business location regardless of whether multiple businesses are operated by the same person, business, owner or licensee. All massage therapists employed in such massage businesses shall be licensed by the state and meet the state standards for massage therapists.
- (b) It shall be unlawful for any for any massage business to operate in the city without a valid and current license issued by the city pursuant to the terms of this article.

(Code 1996, § 26-179; Ord. No. F-1716, § 1, 6-17-2013)

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, 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, provided this exemption is only intended to permit normal and customary barber, 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 who administers such athletic related massage in the normal course of training duties.
- (4) A business operated by a single massage therapist licensed pursuant to the State Massage Therapy Practice Act, 225 ILCS 57/1 *et seq.*. 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) Massage services that are actually performed at the patron's premises, including the patron's place of business or residence."
- (6) Practitioners of other forms of bodywork who restrict manipulation of soft tissue to the feet, hands, and ears, and who do not have the client disrobe, such as reflexology.

(Code 1996, § 26-181; Ord. No. F-1716, § 1, 6-17-2013)

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

All massage businesses required to obtain a 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 requested, or provided, in the application. Applications shall include the following:

- (1) The name, address, phone number and email address of the applicant.
 - a. If the applicant is an individual, the legal name, any nicknames or aliases, business address, written proof of the applicant's age, the citizenship and place of birth of the applicant and, if a naturalized citizen, the time and place of the naturalization, driver's license number.
 - b. If the applicant is a corporation, the corporation's complete name and official business address, the legal name, aliases, business addresses of all the directors, officers, managers of the corporation, and every person owning or controlling more than twenty percent of the voting shares of the corporation, the corporation's date and place of incorporation, the object for which it was formed, and the name and address of the registered agent.
 - c. If the applicant is a partnership (general or limited), joint venture, or any other type of organization where two or more persons share in the profits and liabilities of the organization, the applicant organization's complete name and official business address, the legal name, all aliases, and business addresses of each partner (other than limited partners) or any other person entitled to share in the profits of the organization.
 - d. If the applicant is a limited liability company, the company's complete name and business address, the legal name, aliases, business addresses of all managers and any member who has twenty percent or more interest in the company, the company's date and place of organization, the object for which it was organized, and the name and address of the registered agent.
- (2) The name, address, and phone number of the massage business.
- (3) The length of time that the applicant has been in the massage business.
- (4) The name, address and telephone number of each fee simple owner of the Licensed Premises. If the applicant is not the fee simple owner of the licensed premises, then a copy of the applicant's lease shall be provided.
- (5) Whether the applicant, or any of the individuals identified in the application, within ten years immediately preceding the date of the application:
 - a. Has been convicted of, or pleaded guilty or nolo contendere to any Specified Criminal Act, including the case number, the nature of the misdemeanor or felony offense(s), and the name and location of the court;
 - b. Any misdemeanor or felony based upon conduct or involvement in any massage business or activity; or
 - c. Any felony unrelated to conduct or involvement in any massage business or activity, but which felony involved the use of a deadly weapon, traffic in narcotic drugs, or violence against another person; or
 - d. Any misdemeanor or licensing ordinance violation, based upon conduct or involvement in any massage business, within the past year; or
 - e. Any denial, suspension or revocation by any governmental entity of a license to conduct or operate a business substantially similar as a massage business, including the date and ground for each such denial, suspension or revocation, and the name and location of the business at issue.

- (6) A description of the proposed massage business, including the number of massage therapists, other activities or business conducted at the license premises, and the physical facilities to be used.
- (7) The Massage Business Manager Application, which shall include the name, address, phone number, age and information required in subparagraph (3) above of the individual(s) who shall be the day-to-day, on-site manager of the massage business.
- (8) A current certificate of inspection of the licensed premises from an applicable county board of health, if required.
- (9) The license fee as provided in section 26-185.
- (10) Business, occupation, or employment of the applicant for five years immediately preceding the date of application.
- (11) In the event the applicant is made aware that any information or document submitted as part of this application process is inaccurate or incomplete, the 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.
- (12) The applicants shall submit their fingerprints to be used in completing the investigation. Applicants are required to present themselves for fingerprints to be taken by the city police department. If the applicant is a corporation, fingerprints shall be required of each of the applicant's officers, directors, and any stockholder owning in the aggregate more than 20 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 20 percent interest in such partnership. If the applicant is a limited liability company, fingerprints shall be required of all managers and any member owning more than 20 percent interest in the company. The applicant shall pay the fingerprint fee as provided in section 26-185(b) for each person required to submit fingerprints. Provided, in the case of a renewal application, fingerprints and the fingerprint fee shall not be required from a renewal applicant whose fingerprints are on file unless the city determines that there may be reason to believe that the renewal applicant may have unreported convictions.
- (13) A copy of a state massage license for each massage therapist who will be providing services at the licensed premises, which shall be openly displayed.

(Code 1996, § 26-182; Ord. No. F-1716, § 1, 6-17-2013; Ord. No. O-2023-31, 11, 8-7-2023)

Sec. 26-182. Application processing.

- (a) An application shall not be considered complete or filed until all information and material required of the applicant has been submitted to the city clerk.
- (b) Upon receipt of a complete application, the city clerk shall investigate the information contained in the application and shall determine whether the applicant, owners and the premises designated 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 complete application; provided, however, 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) Within ten business days, following completion of the investigation, the city clerk shall either issue or deny issuance of a license. I city clerk shall notify the applicant in writing that its application for a license has been denied, setting forth the reasons therefor, and advising the applicant of his right to a hearing pursuant to section 26-191. 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.

(Code 1996, § 26-185; Ord. No. F-1716, § 1, 6-17-2013)

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 licensed premises and may not be sold, transferred, or otherwise assigned; provided, however, 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) 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 shall be filed and processed as provided in section 26-182 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.
- (c) The licensee shall, not less than ten business days prior to any change in the licensee's manager taking effect, submit a Massage Business Manager application to the city clerk. The new manager shall be qualified to operate the massage business as provided in section 26-181(5).

(Code 1996, § 26-186; Ord. No. F-1716, § 1, 6-17-2013)

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

No license shall be issued or renewed to:

- (1) An applicant or licensee who does not qualify for a license under Section 26-181(5) above.
- (2) An applicant, owner, agent or straw person for such applicant or owner whose license issued under this article has been revoked for cause.
- (3) An applicant or owner who at the time of application for renewal of a license would not be eligible for such license upon a first application.
- (4) An applicant or owner under 18 years of age.
- (5) An applicant or owner where grounds for revocation exists as provided under section 26-190.
- (6) A corporation, unless it is incorporated in the state, or unless it is a foreign corporation which is qualified under the "Business Corporation Act of 1983," 805 ILCS 5/1.01 et seq., as amended, to transact business in the state.
- (7) An applicant or owner whose massage business is conducted by a manager unless the manager possesses the same qualifications required by the licensee.
- (8) An applicant or owner who is overdue on payment to the city of any taxes, fees, fines, or penalties assessed against, or imposed on, any such applicant or owner.

(Code 1996, § 26-187; Ord. No. F-1716, § 1, 6-17-2013)

Sec. 26-185. Fees.

- (a) The fee for a license shall be in accordance with appendix B to this Code.
- (b) The fingerprint fee shall be in accordance with appendix B to this Code.

(Code 1996, § 26-188; Ord. No. F-1716, § 1, 6-17-2013)

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

- (a) Each license shall expire every two years from the date of issuance and may be renewed only by making application as provided in section 26-181, provided, however, 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, so that the validity of the license will not be affected. "
- (b) If the city clerk denies renewal of a license, the city clerk shall notify the licensee in writing of the reasons therefor. In the event of a denial of a renewal license, the applicant or owner shall not be considered for a license for one year from the date of denial, provided, however, 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.

(Code 1996, § 26-189; Ord. No. F-1716, § 1, 6-17-2013)

Sec. 26-187. Licensed Premises

- (a) 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 licensed premises 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 the licensed premises 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 patron. 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.
- (b) Except where a massage 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.
- (c) The licensed premises shall be in compliance with applicable codes and ordinances of the city, including, but not limited to, zoning, building, property maintenance and life safety codes.
- (d) 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.

(Code 1996, § 26-190; Ord. No. F-1716, § 1, 6-17-2013)

Sec. 26-188. Licensee's responsibility for employees.

Every act or omission of whatever nature constituting a violation of any of the provisions of this article, by any officer, director, manager, massage therapist or other employee or agent of the licensee, shall be deemed and held to be the act of such licensee, and said licensee shall be punishable in the same manner as if said act or omission had been committed by the licensee personally. Accordingly, any such act or omission of any such persons constituting a violation of the provisions of this article shall be deemed, for purposes of determining whether the licensee's license shall be issued, renewed, revoked, or suspended, to be the act of the licensee.

Sec. 26-189. Notice of revocation or suspension of a license.

No license shall be revoked or suspended until the licensee has received written notice of revocation or suspension from the city clerk. The notice shall set forth the allegations of why the license should be revoked or suspended. Said notice shall be served upon the licensee by delivering the same personally or via certified mail return receipt requested to the licensee and licensed premises. 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 licensee contained in the city's files. The revocation or suspension of a license shall be deemed effective three business days after personal service or after the mailing of the written notice as provided herein.

(Code 1996, § 26-191; Ord. No. F-1716, § 1, 6-17-2013)

Sec. 26-190. Revocation or suspension of a license.

A license may be revoked or suspended, in addition to the fines provided for in section 26-194, upon one or more of the following grounds:

- (1) The licensee has committed an act of fraud or deceit in the application for license, or renewal thereof, submitted to the city clerk.
- (2) The licensee 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 has committed an act of fraudulent, false, misleading or deceptive advertising, or of prescribing medicines, drugs, or practices any other licensed profession without legal authority therefor.
- (4) The licensee has committed or allows to be committed any specified criminal act or specified sexual activity, or trafficking in controlled substances after the date of issuance of a license on the licensed premises.
- (5) The licensee is found to be in violation of any section of this article, or any other codes in relation to the licensed premises.
- (6) A licensee knowingly conducted massage activities in the city during a period of time when the licensee's 'license was suspended.
- (7) A licensee is overdue on payment to the city of any taxes, fees, fines, or penalties assessed against, or imposed on, any such licensee
- (8) A licensee or any person identified in the original or renewal application becomes disqualified from holding a license.
- (9) Any massage therapist practicing at the licensed premises commits any act in violation of State of local laws on the licensed premises.

(Code 1996, § 26-192; Ord. No. F-1716, § 1, 6-17-2013)

Sec. 26-191. Hearing.

- (a) Any applicant or licensee 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 on 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, unless the city manager determines that there is an immediate danger to the public health, safety or welfare. If a request for a hearing is not filed, then the decision of the city clerk shall become final and subject to appeal in accordance with subsection (d) below.
- (b) When any applicant or 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 the license 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, however, 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) of this section, 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 licensee. If the city manager determines that a license should not be issued, then the city clerk shall not issue a license. 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. Upon the suspension or revocation of a license, the licensee shall surrender the license to the city clerk.
- (d) The decision of the city manager as provided in subsection (c) of this section 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.

(Code 1996, § 26-193; Ord. No. F-1716, § 1, 6-17-2013)

Sec. 26-192. General regulations.

- (a) No licensee, owner or employee of a massage business shall perform any specified sexual activity.
- (b) The sexual or genital areas of patrons shall be covered by towels, clothing, cloths or undergarments at all times while in the licensed premises.
- (c) It shall be unlawful for any person, knowingly, in a massage business to place his hand upon, to touch with any part of his body, to fondle in any manner, or to massage, a sexual or genital area of any other person.

- (d) No licensee, owner or employee 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 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 issued under this article shall be displayed in a conspicuous location within the customer area of on the licensed premises. Massage therapists shall display in a conspicuous location within the customer area their state 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 licensee who shall be not less than 18 years of age.
- (i) No licensee shall employ as a massage therapist any person unless said person has obtained and has in effect a license issued by the state.
- (j) It shall be unlawful for any licensee to operate a massage business to fail to comply with the conditions and regulations set forth in this article or to suffer or permit noncompliance with such conditions and regulations on or within the licensed premises.
- (k) It shall be unlawful for any licensee 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, which 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 patron's parked vehicle into the premises where the massage is to be performed.
- (p) It shall be unlawful for any licensee 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 licensee at that address who shall bear the burden by clear and convincing evidence to establish that the advertising was not placed by the licensee or its agent.
- (q) All persons working for a licensee shall have a s' current, valid photo identification card present with them while working in a licensed premises.

(Code 1996, § 26-194; Ord. No. F-1716, § 1, 6-17-2013)

Sec. 26-193. Inspection of massage businesses.

The city manager, or his 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 licensee to fail to allow such inspection officer access to the premises or to hinder such officer in any manner.

(Code 1996, § 26-196; Ord. No. F-1716, § 1, 6-17-2013)

Sec. 26-194. Penalty for violation.

Any licensee that has violated, disobeyed, omitted, neglected or refused 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 licensee violating any provision of this article may be subject to having their license revoked, suspended or not renewed.

(Code 1996, § 26-197; Ord. No. F-1716, § 1, 6-17-2013)

Secs. 26-195 to 26-199. Reserved.

SECTION 7: That Section B-4, Administrative Fees, Appendix B, Fee Schedule, of the Wheaton City Code, is hereby amended as follows:

| B-4 Administrative Fees | | |
|---|-------------|-----------------------|
| 1. Alcoholic beverages | (Chapter 6) | |
| A. Application fees | | Per application |
| 1. Retail liquor dealer's license | \$500.00 | |
| 2. Special Event liquor license (Wheaton based non-profit organization, Classes A, B, or I) | \$50.00 | |
| 3. Class F | \$50.00 | |
| B. Liquor license: | | Per license/per class |
| Class A | \$2,000.00 | |
| Class B | \$1,000.00 | |
| Class C | \$3,000.00 | |
| Class D | \$2,500.00 | |
| Class E | \$3,000.00 | |
| Class E-Café | \$3,000.00 | |
| Class F — Not-for-profit only | \$50.00 | Per day |

| | | |
|---|------------|----------------------|
| Class G | \$600.00 | |
| Class H | \$3,000.00 | |
| Class I | \$2,500.00 | |
| Class J-1 | \$3,000.00 | |
| Class J-2 | \$2,000.00 | |
| Class K | \$1,500.00 | |
| Class L | \$2,500.00 | |
| Class M | \$1,500.00 | |
| Class N | \$1,000.00 | |
| Class O | \$500.00 | |
| Class P seasonal market | \$50.00 | Per seasonal license |
| Special event | \$200.00 | Per day |
| Class Q | \$3,000.00 | Per license |
| Class R | \$750.00 | |
| Class S | \$3,000.00 | |
| Class T | \$1,500.00 | |
| Class V | \$1,000.00 | |
| Class W performing arts facility | \$750.00 | |
| Class X arts and crafts studio | \$750.00 | |
| Class Y – Private Craft Cocktail Lounge | \$2,000.00 | |
| Class Z – Private Pickleball Club | \$1,500.00 | |

| | | |
|---------------------|----------|----------------|
| Massage | | |
| - | | |
| a. Two-year license | \$100.00 | Per license |
| b. Fingerprint fee | \$100.00 | Per individual |

SECTION 8: In all other respects, the terms and provisions of the Wheaton City Code are ratified and remain in full force and effect.

SECTION 9: All ordinances or parts of ordinances in conflict with these provisions are hereby repealed.

SECTION 10: In the event that any section, clause, provision, or part of this ordinance shall be found and determined to be invalid by a court of competent jurisdiction, all valid parts that are severable from the invalid parts shall remain in full force and effect.

SECTION 11: This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.


Philip J. Suess

Mayor

ATTEST:


Andrea Rosedale

City Clerk

Roll Call Vote:

Ayes: Councilman Brown
Mayor Suess
Councilman Clousing
Councilwoman Robbins
Councilman Weller
Councilman Barbier
Councilwoman Bray-Parker

Nays: None

Absent: None

Motion Carried Unanimously

Passed: February 20, 2024

Published: February 21, 2024