

ARTICLE XII. MASSAGE PARLORS AND MASSAGE ESTABLISHMENTS¹

Sec. 7-211. Definitions.

For the purpose of the provisions of this chapter, the following words and phrases shall be construed to have the meanings herein set forth:

Customer: Any person who receives services at a massage parlor or massage establishment with or without cost.

Employee: Any person who renders any service in connection with the operation of a massage parlor or massage establishment.

Licensee: The person or entity to whom a business license has been issued to own or operate a massage parlor or massage establishment as defined herein.

Massage: The application of a system of structured touch, pressure, movement, and holding of the soft tissue of the human body in which the primary intent is to enhance or restore the health and well-being of the client. Massage also includes complementary methods, including the external application of water, heat, cold, lubrication, salt scrubs, body wraps, or other topical preparations; and electromechanical devices that mimic or enhance the actions possible by the hands. Massage does not include medical diagnosis; practice of physical therapy; high-velocity, low-amplitude thrust to a joint; electrical stimulation; application of ultrasound; or prescription of medicines.

Massage parlor/sauna/spa: Any business establishment whose principal business is the practice of massage as defined in this section, and which has a fixed place of business where any person, firm, association or corporation carries on any of the activities as defined in this section, as the principal use or as an incidental or accessory use, in excess of the limits provided in the definition of massage establishment. A massage parlor is a regulated use pursuant to Section 10.502A of the Madison Heights Zoning Ordinance and requires a special approval use permit from city council.

Massage establishment: Any business where the practice of massage is performed incidental or accessory to a permitted principal use. The area used for massage may not exceed ten percent of the businesses' total floor area and may not exceed three work areas. This includes uses such as a health club, health spa, physical fitness club, hair salon or other business that customarily offers massage on occasion and incidental or accessory to its principal operation.

Massage therapist: Any person who engages in the practice of massage as defined in, and licensed under, P.A. 471 of the Public Acts of 2008, MCL 333.16334 et seq.

Outcall massage service: Any service, the function of which is to engage in, or carry on, massage at a location designated by the customer or client other than a licensed massage parlor or massage establishment as defined in this section.

Person: Any person, partnership, corporation, company or other entity of whatever form or character.

¹Editor's note(s)—Ord. No. 1063, § 1, adopted Oct. 12, 2009, amended Art. XII in its entirety to read as herein set out. Former Art. XII, §§ 7-211—7-235, pertained to massage establishments, massage parlors, massagists, masseurs, and masseuses, and derived from Ord. No. 934, § 2, adopted April 22, 1996.

Sexual or genital area: Genitals, pubic area, buttocks, anus, or perineum of any person, or the vulva or breasts of a female.

(Ord. No. 1063, § 1, 10-12-09)

Sec. 7-212. License required.

- (a) *Business license required.* Each massage parlor or massage establishment shall have in effect at all times a valid business license issued by the City of Madison Heights pursuant to the provisions of this article for each business location operated by such business. The application, and the license, shall clearly state that the business is a massage parlor or massage establishment.
- (b) *Massage therapist license required.* No person shall be employed as, or practice massage unless he or she has a valid massage therapist license issued by the State of Michigan.
- (c) *Responsibility of owner, etc.* It shall be the responsibility of an owner, operator, manager or licensee hereunder to ensure that each person employed or engaged by him or her in said business as a massage therapist shall have a valid State of Michigan massage therapist license. It is understood that the owner, operator, manager or licensee is deemed aware of, and responsible for, all activities and the actions of all employees.

(Ord. No. 1063, § 1, 10-12-09)

Sec. 7-213. Exemptions.

This article shall not apply to:

- (1) Medical practitioners licensed by the State of Michigan Board of Medicine.
- (2) Barbers and cosmetologists who are licensed by the State of Michigan Board of Barber Examiners or Board of Cosmetologists except that this exemption shall apply solely to the massaging of the neck, face, scalp and hair of the customer for cosmetic or beautifying purposes.
- (3) An athletic trainer licensed by the State of Michigan under P.A. 54 of the Public Acts of 2006, MCL 333.16336 et seq.
- (4) The practice of massage that is an integral part of a program of study by students enrolled in a school, provided that they are identified as students and provide massage services only while under the supervision of a licensed massage therapist.

In any prosecution for a violation of this article, the foregoing exemptions shall constitute affirmative defenses and it shall be incumbent upon the defendant to show that he or she or the place involved are not subject to the provisions of this article. Nothing herein contained shall be deemed to shift the burden of proof of the violation to the defendant.

(Ord. No. 1063, § 1, 10-12-09)

Sec. 7-214. Application for massage parlor or massage establishment license; fees.

Every applicant for a license to maintain, operate or conduct a massage parlor or massage establishment shall file an application under oath with the city clerk's office upon a form provided by the city clerk and pay a nonrefundable application and background investigation fee. The application shall contain the following information:

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- (1) A definition of service(s) to be provided.
 - (2) The location, mailing address and all telephone numbers where the business is to be conducted.
 - (3) The name and residence address of each applicant for the past ten years.
 - a. If the applicant is a corporation, the names and residence address of each of the officers and directors of said corporation, the address of the corporation itself, if different from the address of the massage establishment, and the name and the business and residence address of the resident agent.
 - b. If the applicant is a partnership, the name and residence address of each of the partners and the partnership itself, if different from the address of the massage establishment.
 - (4) Individual or partnership applicant's height, weight, sex, date of birth, color of eyes and hair.
 - (5) Either a Social Security number, driver's license number or State I.D. number, and the date of birth for each applicant.
 - (6) Two portrait photographs of the applicant at least two inches by two inches. If the applicant is a corporation provide photographs of the president and if a partnership provide photographs of each partner, including a limited partner in said partnership.
 - (7) Business, occupation, or employment of the applicant for the three years immediately preceding the date of application, including the name, address and telephone number of any and all employers.
 - (8) The massage or similar business history of the applicant; whether such person has previously operated in this or another city or state, has had a business license revoked, suspended or denied, the reason therefore, and the business activity or occupation subsequent to such action of suspension, revocation, or denial.
 - (9) All criminal convictions other than misdemeanor traffic violations, including the dates of convictions, nature of the crime and place convicted; including those outside of the State of Michigan.
 - (10) A copy of a valid State of Michigan massage therapist license for each person who is, or will be, employed in said establishment.
 - (11) The name and address of any massage business or other establishment owned or operated by any person whose name is required to be given in subsection (3) above, wherein the business or profession of massage is carried on.
 - (12) A description of any other business to be operated on the same premises or on adjoining premises owned or controlled by the applicant.
 - (13) Authorization for the city, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the license.
 - (14) All information required by this section, including any background investigation, shall be provided at the applicant's expense. Upon completion of the above provided form and the furnishing of all foregoing information, the City of Madison Heights shall accept the application for the necessary investigations. The holder of a massage establishment license shall notify the City of Madison Heights of any change in any of the dates required to be furnished by this section within ten days after such change occurs.
 - (15) Massage parlor or massage establishment licenses shall be renewed annually.

(Ord. No. 1063, § 1, 10-12-09)

Sec. 7-215. Fees.

City council shall establish massage parlor and massage establishment initial and renewal license fees by resolution. All fees shall be paid in full prior to the issuance of a license.

(Ord. No. 1063, § 1, 10-12-09)

Sec. 7-216. License procedures.

- (a) *Investigation.* Any applicant for a license pursuant to this article shall present to the city clerk's office the application packet containing the aforementioned and described information. Upon receipt of such application; the city clerk will refer same to the chief of police, fire marshal, community development department, treasurer and such other city officers or employees as he or she may desire, who shall cause a thorough investigation, including a complete history of past business experience and state or local law violations, if any, to be made of the persons or premises which must meet or exceed codes. The building official and the fire marshal shall inspect the premises proposed to be devoted to the massage parlor, message establishment or similar business and shall notice all violations of this article, and all other applicable city ordinances and regulations to the applicant. All said violations shall be corrected and inspected prior to issuance of a license. The findings resulting from such investigations shall be reported to the city clerk. If the application is approved by all departments the clerk shall forward the application to the city council for its consideration.
- (b) *License approval.* An applicant for a license will be required to appear before the city council and answer any questions pertaining to such plans. If the city council is satisfied that all the criteria set forth herein for a license have been met, it may grant approval of the license, subject to any conditions contained in the approval.
- (c) *Denial.* In the event that an initial application is denied by a department based on grounds contained in sections 7-27, 7-32 and 7-218, the clerk shall notify the applicant of the denial and advise the applicant of the right to appeal pursuant to section 7-33.
- (d) *Continued compliance.* Applicants for massage parlor or massage establishment licenses shall continue to comply with all applicable state and city regulations, including any conditions of the business license, and will operate premises consistent with any representations made to the city council in obtaining the license. Failure of such compliance may result in the refusal by the city council to renew a license or in revocation of the licenses.

(Ord. No. 1063, § 1, 10-12-09)

Sec. 7-217. Issuance of license.

Upon compliance with the terms and provisions of this article, and upon payment in full of the required fee, the city clerk shall issue a license. Evidence of the license shall bear the signature of the city clerk.

(Ord. No. 1063, § 1, 10-12-09)

Sec. 7-218. Grounds for denial.

- (a) *Grounds for mandatory denial.* No license for the operation of a massage parlor or massage establishment shall be issued if any department of the city determines that one or more of the following conditions exists:
 - (1) Any mandatory cause or grounds for denial contained in section 7-27.

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- (2) The correct license fee has not been tendered to the city and in the case of a check, or bank draft, honored with payment upon representation.
 - (3) The operation, as proposed by the applicant, if permitted, would not comply with all applicable laws, including, but not limited to, the city's building, zoning and health regulations.
- (b) *Grounds for permissive denial.* The city may deny a massage parlor or massage establishment license if any of the following conditions exist. Applicants may appeal such denial pursuant to section 7-33.
- (1) Any permissive cause or grounds for denial contained in sections 7-27.
 - (2) The applicant has knowingly made any false or fraudulent statement of fact in the license application or in any document required by the city in conjunction therewith.
 - (3) The applicant has had any massage related business, massage therapist, or other similar permit or license denied, revoked or suspended by the city or any other local, county or state agency within ten years prior to the date of the application.
 - (4) The applicant, if an individual, or any of the officers and directors, if the applicant is a corporation; or any of the partners, including limited partners, if the applicant is a partnership; and the manager or other person principally in charge of the operation of the business, is not over the age of 18 years.
 - (5) The location proposed or methods of operation have, or will, detrimentally and unreasonably impact nearby property owners, businesses and residents.

(Ord. No. 1063, § 1, 10-12-09; Ord. No. 2171 , § 10, 10-25-21)

Sec. 7-219. Posting of license.

Every individual, corporation, partnership or association licensed under this article shall display the city license, and the state massage therapist license for every therapist, in a conspicuous location visible to the general public.

(Ord. No. 1063, § 1, 10-12-09)

Sec. 7-220. Records of employees and customers.

The licensee, or the person designated by the licensee, of a massage parlor or massage establishment, shall maintain a register of all persons employed or engaged as massage therapist. Included in the register will be a copy of each massage therapist license and the start and termination date of the employment. Such register shall be available at the massage parlor or massage establishment for inspection by representatives of the City of Madison Heights or county or state departments during regular business hours.

(Ord. No. 1063, § 1, 10-12-09)

Sec. 7-221. Renewal of license.

Application to renew a license to operate a massage parlor or massage establishment or similar business shall be filed at least 45 days prior to the date of expiration. Such renewal shall be annual and shall be accompanied by the annual fee.

- (1) The applicant shall present all of the following information to the city clerk's office at the time of application including a sworn affidavit by the applicant stating that the matters contained in the

original application have not changed, or if they have changed, specifically stating the changes which have occurred. Incomplete application packets will not be accepted.

- (2) The application shall be referred to the chief of police who shall investigate the criminal history of the applicant. Failure to submit an application or failure to submit a complete application shall result in the non-renewal of the license.
- (3) In the event the renewal is denied, the applicant may appeal pursuant to section 7-33. The hearing officer shall consider whether a licensed establishment has been operated during the existing license years in a manner consistent with the provisions of this article and all other applicable laws and regulations of the City of Madison Heights and the State of Michigan.

(Ord. No. 1063, § 1, 10-12-09)

Sec. 7-222. Revocation or suspension of license.

Each establishment within the city for which a massage parlor or massage establishment license is granted shall be operated and maintained in accordance with all applicable laws and regulations of the City of Madison Heights and the State of Michigan. Upon any violation of this article, pursuant to sections 7-27 and 7-218, the hearing officer, may, after notice and hearing, revoke such license pursuant to the procedure in section 7-33.

(Ord. No. 1063, § 1, 10-12-09; Ord. No. 2171 , § 10, 10-25-21)

Sec. 7-223. Reserved.

Sec. 7-224. Facilities necessary.

No license to conduct a massage parlor or massage establishment shall be issued unless inspectors of the City of Madison Heights certify that the establishment complies with each of the following minimum requirements:

- (1) All provisions of the applicable building, fire, property maintenance and health codes have been fulfilled.
- (2) A recognizable and readable sign shall be posted at the main entrance identifying the establishment as a massage parlor or massage establishment; all signs shall comply with the sign permit requirements of the City of Madison Heights.
- (3) There shall be no entrance or exit way which provides direct access to another type of business, residence or living quarters.
- (4) During business hours no exits shall be locked or obstructed in any way to prevent the immediate free ingress or egress of persons.
- (5) Adequate bathing, dressing, locker, and toilet facilities shall be provided for customers. A minimum of one tub or shower, and if clothing and personal property is not kept with the customer, a separate locker for each customer to be served, which shall be capable of being locked, If male and female customers are to be served simultaneously at the establishment, separate bathing, dressing, locker, toilet facilities and massage rooms shall be provided.
- (6) The premises shall have adequate equipment for disinfecting and sterilizing non-disposable instruments and materials used in administering massages. Such non-disposable instruments and materials shall be disinfected after use on each customer.

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- (7) Closed cabinets shall be provided and used for the storage of clean linens, towels and other materials used in connection with administering massages. All soiled linens, towels and other materials shall be kept separate from the clean storage areas. No common use of towels or linens shall be permitted.
 - (8) A minimum of one separate wash basin shall be provided in each massage parlor for the use of employees of any such establishment, the basin shall provide soap or detergent and hot and cold water and all times, and shall be located within or as close as practical to the area devoted to the performing of massage services. In addition, there shall be provided at each wash basin sanitary towels placed in permanently installed dispensers.

(Ord. No. 1063, § 1, 10-12-09)

Sec. 7-225. Operating requirements.

- (a) Every portion of the massage parlor or massage establishment, including appliances and apparatus, shall be kept clean and operated in a sanitary condition.
- (b) Price rates for all services shall be prominently posted in the reception area in a location available to all prospective customers.
- (c) The premises shall not be made available for accommodating any person as sleeping quarters. No beds, water mattresses, cots, or equipment designed for sleeping shall be permitted on the premises.
- (d) No massage shall be performed in a private room which is completely closed off to the view of other persons nor fitted with a door capable of being locked or barred. Measures may be used to offer privacy to customers such as partitions, walls and curtains.
- (e) All employees attending customers shall be clean and wear clean uniforms covering the torso. Such uniforms shall be nontransparent and of washable material and shall be kept in a clean condition. Such clothing shall cover the human genitals, pubic region or pubic hair; buttock or female breast or breasts or any portion thereof that is situated below a point immediately above the top of the areola; or any combination of the foregoing.
- (f) All massage parlor or massage establishments shall be provided with clean laundered sheets and towels in sufficient quantity and shall be laundered after each use thereof and stored in a sanitary manner.
- (g) No massage parlor or massage establishment granted a license under the provisions of this article shall place, publish, or distribute or cause to be placed, published, or distributed any advertisement, picture, or statement which is known or through the exercise of reasonable care should be known to be false, deceptive or misleading in order to induce any person to purchase or utilize any professional massage services.

(Ord. No. 1063, § 1, 10-12-09)

Sec. 7-226. Persons under age eighteen prohibited on premises.

No person shall permit any person under the age of 18 years to come or remain on the premises of any massage parlor or massage establishment, as a massage therapist, employee, or customer.

(Ord. No. 1063, § 1, 10-12-09)

Sec. 7-227. Alcoholic beverages prohibited.

No person shall sell, give, dispense, provide or keep, or cause to be sold, given, dispensed, provided or kept, any alcoholic beverage on the premises of any massage parlor or massage establishment.

(Ord. No. 1063, § 1, 10-12-09)

Sec. 7-228. Hours.

No massage parlor or massage establishment shall be kept open for any purposes between the hours of 2:00 a.m. and 8:00 a.m.

(Ord. No. 1063, § 1, 10-12-09)

Secs. 7-229, 7-230. Reserved.

Sec. 7-231. Unlawful acts.

- (a) It shall be unlawful for any person in a massage parlor or massage establishment to touch, fondle or massage the sexual or genital area of another person, or any portion thereof.
- (b) It shall be unlawful for any person in a massage parlor or massage establishment to touch, fondle or massage his or her sexual or genital area, or any portion thereof.
- (c) It shall be unlawful for any person in a massage parlor or massage establishment to expose his or her sexual or genital area, or any portion thereof.
- (d) It shall be unlawful for any employee, while in the presence of any other person in a massage parlor or massage establishment, to fail to conceal the sexual or genital area of his or her body with a fully opaque covering.
- (e) It shall be unlawful for any person owning, operating or managing a massage parlor or massage establishment to permit any agent, employee, or any other person under his control or supervision to perform such acts prohibited in this section.
- (f) It shall be further unlawful for any licensee under this article to administer massage on an outcall basis as defined. Such person shall administer massage solely within an establishment licensed to carry on such business under this article. Any violation of these provisions shall be deemed grounds for revocation of the license granted hereunder. The restriction on outcall massage shall not apply to a licensee who performs outcall massage as defined herein upon a customer or client who because of reasons of physical defects or incapacities or due to illness is physically unable to travel to the massage parlor or massage establishment. If any outcall massage is performed under this exception, a record of the date and hour of each treatment, and the name and address of the customer or client, and the name of the employee administering such treatment and the type of treatment administered shall be kept by the licensee or person or employee designated by the licensee. Such records shall be open to inspection by officials charged with the enforcement of this article or of public health laws. The information furnished or secured as a result of any such inspection shall be confidential. Any unauthorized disclosures or use of such information shall be unlawful.
- (g) It shall be unlawful for any massage service to be carried on within any cubical, room, booth, or any area within a massage parlor or massage establishment which is fitted with a door capable of being locked.

(Ord. No. 1063, § 1, 10-12-09)

Sec. 7-232. Location.

A massage parlor shall be located as provided in Section 10.502(A) of the Madison Heights Zoning Ordinance being Appendix A of the Madison Heights City Code.

(Ord. No. 1063, § 1, 10-12-09)

Sec. 7-233. Sale, transfer or change of location.

Upon sale, change of any of the owners, transfer or relocation of a massage parlor or massage establishment, the license therefore shall be null and void. It shall be the duty of all owners or licensees having knowledge of the sale, transfer or relocation of the massage parlor or massage establishment, to immediately report such sale, transfer or relocation to the city clerk's office and apply for a new license. The failure to do so shall result in an immediate suspension of the license.

(Ord. No. 1063, § 1, 10-12-09)

Sec. 7-234. Name and place.

No person granted a license pursuant to this article shall operate or advertise the massage parlor or massage establishment under a name not specified in their license, nor shall they conduct business under any designation or at any location not specified in their license.

(Ord. No. 1063, § 1, 10-12-09)

Sec. 7-235. Penalty.

Any person who violates any of the provisions of this article shall be guilty of a misdemeanor punishable by a fine of not less than \$100.00, nor more than \$500.00, and/or 90 days in jail. Each day the violation continues shall be deemed a separate offense.

(Ord. No. 1063, § 1, 10-12-09)

Secs. 7-236—7-239. Reserved.