

## CHAPTER 5.44 MESSAGE BUSINESSES ESTABLISHMENTS

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### 5.44.101: PURPOSE AND INTENT

In enacting this chapter, the City Council recognizes that commercial massage therapy is a professional pursuit which can offer the public valuable health and therapeutic services. The City Council further recognizes that, unless properly regulated, the practice of massage therapy and the operation of massage businesses may be associated with unlawful activity and pose a threat to the quality of life in the local community. Accordingly, it is the purpose and intent of this chapter to protect the public health, safety and welfare by providing for the orderly regulation of businesses providing massage therapy services, discouraging prostitution, human trafficking and related illegal activities carried on under the guise of massage therapy, and establishing certain sanitation, health, and operational standards for massage businesses.

### 5.44.~~010~~102: DEFINITIONS

For the purposes of this chapter, the following words shall have the meanings set forth in this section:

ADVERTISE: To publish, display, or disseminate information and includes, but is not limited to, the issuance of any card, sign, or direct mail, or causing or permitting any sign or marking on or in any building or structure or in any newspaper, magazine, or directory, or any announcement or display via any televised, computerized, electronic, or telephonic networks or media, including advertising through internet sites, online bulletin boards or internet forums.

EQUITY HOLDER: Any natural person who is a shareholder, partner, member, trustee, or other principal owner of the massage business, who owns ten percent (10%) or greater financial

interest in the massage business, whether directly or indirectly through any number of holding entities, partnerships, or trusts.

MANAGING AGENT: Person who is responsible for and will have knowledge of the day to day oversight and operation of the business.

MASSAGE:

- A. The examination , assessment, and evaluation of the soft tissue structures of the body for the purpose of devising a treatment plan to promote homeostasis;
- B. The systematic manual or mechanical manipulation of the soft tissue of the body for the purpose of promoting the therapeutic health and well-being of a client, enhancing the circulation of the blood and lymph, relaxing and lengthening muscles, relieving pain, restoring metabolic balance, or achieving homeostasis, or for any other purpose;
- C. The use of the hands or a mechanical or electrical apparatus in connection with this subsection;
- D. The use of rehabilitative procedures involving the soft tissue of the body;
- E. Range of motion or movements without spinal adjustment as set forth in Utah Code Ann. § 58-73-102. The use of oil rubs, heat lamps, salt glows, hot and cold packs, or tub, shower, steam, and cabinet baths;
- F. Manual traction and stretching exercise;
- G. Correction of muscular distortion by treatment of the soft tissues of the body;
- H. Counseling , education, and other advisory services to reduce the incidence and severity of physical disability, movement dysfunction, and pain;
- I. Activities and modality techniques similar or related to the activities and techniques described in this subsection;

MASSAGE BUSINESS: A business that offers massage in exchange for any form of consideration or advertises as offering massage.

MASSAGE THERAPIST: Any person who administers or offers to administer to another person, for any form of consideration or hire, a massage.

SPECIFIED ANATOMICAL AREAS:

- A. Less than completely and opaquely covered: human genitals, pubic region, buttocks and female breast below a point above the top of the areola.
- B. Human male genitals in a discernibly turgid state even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES: Acts, simulated acts, exhibitions, representations, depictions or descriptions of:

- A. Human genitals in a state of sexual stimulation or arousal.
- B. Fondling or other erotic touching of human genitals, pubic region, buttocks or female breast.
- C. Intrusion, however slight, of any object, any part of an animal's body, or any part of a person's body into the genital or anal openings of any person's body or into an animal's body.
- D. Cunnilingus, fellatio, anilingus, masturbation, bestiality, lewd exhibition of genitals or excretory function.
- E. Flagellation, mutilation or torture for purposes of sexual arousal, gratification or abuse.

~~MESSAGE ESTABLISHMENT: Any location, place, area, structure or business used for the practice of massaging or instructing massage.~~

~~MASSEUR: Any person who is duly licensed as a massage therapist or a massage apprentice by the state of Utah and gives massages for hire; provided, that a person who is duly licensed by the state of Utah to practice the healing arts, as specified by the Utah massage therapy practice act, shall not be included within this definition.~~

~~PRACTICE OF MESSAGE THERAPY: Activities defined as the practice of message therapy in the Utah message therapy practice act.~~

#### **5.44.020103: MESSAGE BUSINESS LICENSE REQUIRED; TRANSFERABILITY APPLICATION; FEES**

- ~~A. License Required: It is unlawful for any person to operate, conduct, carry on or maintain a message establishment business without meeting the requirements of this section and obtaining possessing a valid messagea business license for each message business premises where the message business operatesas required by this chapter.~~
- ~~B. Each message business license shall specify the name under which the licensee is to operate, the address of the principal place of business, the expiration date, the number of the license, and any other information the City deems necessary.~~

~~State License: It is unlawful for any person to operate a message establishment or to engage in the business of a masseur or the practice of message therapy in the city without first being licensed by the state of Utah as a masseur.~~

- ~~C. The message business shall display the business license in a conspicuous place readily visible to persons entering the licensed message business premises.~~

~~Requirements For The Issuance Of A License: Every person desiring a massage establishment license shall make application therefor to the business license authority and shall file with the application the following:~~

- ~~1. A statement and verification that the applicant for a massage establishment license is of at least eighteen (18) years of age;~~
- ~~2. A statement describing the services to be provided by the business, with sufficient detail to allow reviewing authorities to determine what business will be transacted on the premises, together with a schedule of usual fees for services to be charged by the licensee and any rules, regulations or employment guidelines under or by which the business intends to practice;~~
- ~~3. A statement detailing the license or permit history of the applicant for the five (5) year period immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate, in this or any other county, city, state or territory, has ever had a license, permit or authorization to do business denied, revoked or suspended, or has had any professional or vocational license or permit denied, revoked or suspended. In the event of any such denial, revocation or suspension, state the date, the name of the issuing or denying jurisdiction and state in full the reasons for the denial, revocation or suspension. A copy of any order of denial, revocation or suspension shall be attached to the application;~~
- ~~4. Written disclosures of all convictions of crimes involving moral turpitude within the past five (5) years;~~
- ~~5. Proof that the applicant and all employees are licensed by the state of Utah as masseurs.~~

~~D. Changes In Information: Any change in information required to be submitted under this chapter for a massage establishment business license shall be given, in writing, to the business license authority and the police department within fourteen (14) days after such change.~~

~~E. License Fees: The license fee for a massage establishment shall be set by resolution of the city council.~~

#### **5.44.030: INVESTIGATION OF APPLICANT AND PREMISES**

~~The application for such license, together with such other information as is required by the city to be attached thereto, shall be referred to the police department and the health department, and other city departments as appropriate, for investigation and recommendation as to the moral character of the applicant and the sanitary conditions of the premises to be used.~~

#### **5.44.040: ISSUANCE OF LICENSE**

~~Upon receipt of the report and recommendation from the police department and the health department, and other city departments as appropriate, the business licensing authority shall act upon the application in granting or denying the license.~~

#### **5.44.050: DISPLAY OF LICENSE**

~~Every massage establishment licensed under this chapter shall display in a conspicuous place on the licensed premises, and every masseur licensed by the state shall display in a conspicuous place on the premises where he or she engages in the pursuits of a masseur, the massage establishment license and/or individual's masseur license duly issued by the state, together with a notice listing all persons employed in said massage establishment or engaged in the pursuits of a masseur under the license. This notice shall be in a type which is easily read.~~

#### **5.44.104: APPLICATION REQUIREMENTS; BACKGROUND CHECKS**

A. In addition to the requirements set forth in this chapter, the application for a massage business license shall also include:

1. The full name and any other names under which each equity holder of the applicant is or has been known, and the residence address, telephone number, and date of birth of each equity holder of the applicant;
2. The full name, address and phone number of all of the massage business's employees, independent contractors, and any other persons who are performing massage and a copy of their valid Utah massage therapist license and government issued photo identification;
3. Each massage business shall have at least one managing agent in state and each massage business application shall include the full name, address and phone number of all of the massage business's managing agent(s) and a detailed description of the responsibilities of the managing agent(s) and when the managing agent(s) will be expected to be on the massage business premises;
4. A description of the specific types of services to be rendered;
5. Documentary evidence that the officers and managers of the applicant are at least a minimum of eighteen (18) years old;
6. Documentary evidence that the applicant has or will have possession of the massage business premises to be licensed during the term of the license by ownership, lease, rental, or other arrangement;
7. A statement identifying the zone district of the massage business premises; and
8. A detailed diagram showing the configuration of the massage business premises to be licensed as follows:

- a. The diagram shall be no larger than eight and one-half inches by eleven inches (8½" x 11");
  - b. The diagram shall include the dimensions and total square footage of the massage business premises to be licensed but does not need to be drawn to scale;
  - c. The diagram shall designate the use of each room or other definitive area of the massage business premises to be licensed;
  - d. The diagram shall show the type of control of the exterior areas of the massage business premises to be licensed, including, without limitation, fences, walls, and entry/exit points;
  - e. If the massage business premises to be licensed consists of multiple levels, a separate diagram shall be filed for each floor; and
  - f. The massage business premises to be licensed shall be outlined in bold. The Licensing Officer may waive the site diagram for renewal applications if the applicant adopts a diagram that was previously submitted, certifies that the configuration of the massage business premises has not been altered since it was prepared and that the use of any area or room in the massage business premises has not changed.
- B. Each equity holder and managing agent shall meet the general standards and qualifications for an applicant as set forth in this chapter.
- C. Each applicant's, managing agent's, and equity holder's criminal history, any conviction or guilty plea to a charge based upon acts of dishonesty, fraud, deceit, violence, weapons, substance abuse or narcotics, sexual misconduct or prostitution related misconduct of any kind, regardless of the jurisdiction in which the act was committed, may be considered in a decision to grant, renew, revoke, or suspend the license.
- D. In the event the Business License Official takes into consideration information concerning the applicant's, managing agent's, and equity holder's criminal history record, the Business License Official shall also consider any information provided by the applicant or licensee regarding the criminal history record, including, but not limited to, evidence of mitigating factors, rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for a license or renewal.

#### **5.44.105: EXEMPTIONS**

The licensing requirements of this chapter do not apply to:

- A. Public and private schools accredited by the state board of education or approved by the state division of private occupational schools;

- B. Facilities providing massage services by employees of any governmental entity;
- C. Training rooms of a recognized professional or amateur sports organization, dance troupe, bona fide athletic club, or other such athletic organization. For purposes of this section, a bona fide athletic club is an athletic club that receives ten percent (10%) or less of its gross income from providing massages to its members or the public;
- D. Offices, clinics, and other facilities primarily used by state-licensed health care professionals, other than massage therapists, in the ordinary course of their health care profession. For purposes of this section, a licensed massage therapist may provide massage services in a facility that primarily is used for state-licensed health care services other than massage without obtaining a massage business license;
- E. Barber shops, beauty salons, and other facilities at which barbers and cosmetologists licensed by the state provide massage services to the public in the ordinary course of their professions;
- F. A place of business where a person offers to perform or performs massage for not more than seventy two (72) hours in any six-month period and the massage is part of a public or charity event;
- G. A self-employed massage therapist providing massages services at the massage therapist's home. Self-employed massage therapists are subject to the Title 5.38 governing home occupations;
- H. A spa or resort operated on the massage business premises of a hotel with at least one hundred (100) rooms for overnight guests.

#### **5.44.070: TRANSFER OF OWNERSHIP OF BUSINESS LICENSE PROHIBITED**

Massage establishment business licenses granted under this chapter shall not be transferable.

#### **5.44.080: REVOCATION OF LICENSE; CONDITIONS**

~~Any person, firm or corporation violating any provisions of this chapter shall be guilty of a class B misdemeanor and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this chapter is committed, continued or permitted.~~

#### **5.44.106: DENIAL, SUSPENSION, OR REVOCATION OF LICENSE**

In addition to the grounds set forth elsewhere in the South Jordan City Municipal Code, a massage business license may be denied, suspended, or revoked if the applicant, massage business principal, managing agent, equity holder, employee of the massage business, or independent contractor of the massage business:

- A. Has made a willful misrepresentation in applying for and obtaining a license;

- B. Fails to notify the City within ten days of any change in the information on the application, including, but not limited to, the hiring or termination of certified massage therapists or managing agent, the change of any equity holder information, the change of the business's address, or changes any other change in the registration information.
- C. Has been previously denied a license under this part or has had a license issued under this part suspended or revoked;
- D. Has had a massage business license/permit revoked or suspended in another jurisdiction;
- E. Applicant's operation of a massage business would be a threat to the public health, welfare or safety;
- F. Has violated any provision of this chapter or any other applicable law;
- G. Has failed within the required timeframe to remit payment to the City for any fees, fines or penalties incurred pursuant to this code;
- H. Has been convicted of operating without a license under this chapter or performing any act for which a license is required under this chapter;
- I. Advertises or fails to prevent any advertisement of specified sexual activities, prostitution, escort services, or other sexual services or language in the text of any advertising or any images that would reasonably suggest to a prospective client that any specified sexual activities are available through the massage business or at the massage business premises;
- J. Fails to prevent any unlawful activity to occur on the premises by employees, guests, or others that are or should be under the supervision of the massage business principal, managing agent, or equity holder of the business license.

#### **5.44.090: VIOLATIONS**

~~Any person, firm or corporation violating any provisions of this chapter shall be guilty of a class B misdemeanor and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this chapter is committed, continued or permitted.~~

#### **5.44.060: PROHIBITED ACTS**

~~The following acts are prohibited:~~

- ~~A. It is unlawful to serve, to store, or allow to be served, or allow to be consumed, any alcoholic beverage on the licensed premises of a massage establishment.~~
- ~~B. It is unlawful for a premises licensed as a massage establishment to be used for the purpose of housing, sheltering or harboring, or cause or permit the same to be used as living or sleeping quarters by employees or other persons.~~



- ~~C. It is unlawful for a masseur to massage, touch, or apply any instrument or device in the course of practicing or engaging in massage therapy to the genitals or anus of a patron.~~
- ~~D. It is unlawful for a masseur to massage, touch, or apply any instrument or device in the course of practicing or engaging in massage therapy to the breasts of a female patron, except as permitted by the Utah massage therapy practice act.~~
- ~~E. No owner, operator, responsible manager, employee, manager or licensee in charge of or in control of a massage establishment shall permit, nor shall any employee or masseur administer a massage, unless the patron is covered by a covering provided by the establishment, which shall be clean, sanitary and opaque and capable of covering the patron's anatomical areas specified in subsections C and D of this section, and no common use of such covering shall be permitted, nor any reuse permitted, unless the covering has been adequately cleaned and sanitized.~~
- ~~F. With the exception of bathrooms, dressing rooms, or any other room used for dressing purposes, no owner, operator, responsible managing employee, manager or licensee in charge of or in control of any massage establishment shall permit any person in any area within the massage establishment which is used in common by the patrons, or which can be viewed by patrons from such an area, unless the person's anatomical areas specified in subsections C and D of this section are fully covered. Further, no owner, operator, responsible managing employee, manager or licensee in charge of or in control of a massage establishment shall permit any person to be in any room with another person unless all the person's anatomical areas specified in subsections C and D of this section are completely covered.~~
- ~~G. No owner, operator, responsible managing employee, manager or licensee in charge of or in control of a massage establishment shall permit any masseur or employee to be on the premises of a massage establishment during its hours of operation while performing, or available to perform, any task or service associated with the operation of a massage business, unless the masseur or employee is fully covered from the center of the kneecap to the base of the neck, excepting the hands and arms. Such covering must be of opaque material and maintained in a clean and sanitary condition.~~

#### **5.44.107: UNLAWFUL ACTS; VIOLATIONS**

- A. It is unlawful for any massage business principal, managing agent, equity holder, employee or independent contractor working or available for work at the business location to:
1. Directly or indirectly, personally or through an agent or employee, conduct any massage business, or to use in connection with the massage business any massage business premises, in whole or in part, without possessing a valid massage business license for each massage business premises where the massage business operates;
  2. Make a willful misrepresentation in applying for or obtaining a massage business license; or
  3. Flee, attempt to flee, elude, hider or prevent inspection pursuant to this code or State law.

B. It is unlawful for any massage business principal, managing agent, and equity holder of a massage business to:

1. Employ any person as a massage therapist or to allow any person to work or be available to work as a massage therapist in a massage business who does not possess both a valid government-issued, photographic identity card and a valid Utah massage therapist license;
2. Encourage, permit, or tolerate any employee or any person working as a massage therapist or client of the massage business to engage in specified sexual activities or to expose the employee's specified anatomical areas within the massage business premises;
3. Fail to keep records as required by this chapter or fail to permit inspection of records as required by this chapter;
4. Fail to immediately report to law enforcement any specified sexual activities occurring in a massage business between an employee of the massage business and a client; or
5. Permit the massage business premises to be used for living or sleeping quarters for any person when not otherwise permitted by this code.

C. It is unlawful for any employee, independent contractor, or any other person to perform or be available to perform a massage on the massage business premises unless that person has a valid Utah massage therapist license and government issued photo identification.

D. It is unlawful for a masseur or anyone acting as a masseur to massage, touch, or apply any instrument or device in the course of practicing or engaging in massage therapy to the genitals or anus of a patron.

E. It is unlawful for a masseur or anyone acting as a masseur to massage, touch, or apply any instrument or device in the course of practicing or engaging in massage therapy to the breasts of a female patron, except as permitted by the Utah massage therapy practice act.

F. It is unlawful for any massage business to operate between the hours of ten o'clock (10:00) P.M. and eight o'clock (8:00) A.M., inclusive.

G. Each massage business principal, managing agent, and equity holder shall not violate, or permit to be violated, any local, State, or Federal law based on acts of dishonesty, fraud, deceit, violence, weapons, substance abuse or narcotics, sexual misconduct, or prostitution related misconduct of any kind, whether or not the acts were committed in the State of Utah.

H. It is unlawful to serve, to store, or allow to be served, or allow to be consumed, any alcoholic beverage on the licensed massage business premises of a massage business.

- I. No massage business principal, managing agent, equity holder, manager, licensee, employee, or person in charge of or in control of a massage business shall permit, nor shall any employee or masseur administer a massage, unless the patron is covered by a covering provided by the business, which shall be clean, sanitary and opaque and capable of covering the patron's anatomical areas, and no common use of such covering shall be permitted, nor any reuse permitted, unless the covering has been adequately cleaned and sanitized.
- J. No massage business principal, managing agent, equity holder, manager, licensee, employee, or person in charge of or in control of a massage business shall permit any masseur or employee to be on the massage business premises of a massage business during its hours of operation while performing, or available to perform, any task or service associated with the operation of a massage business, unless the masseur or employee is fully covered from the center of the kneecap to the base of the neck, excepting the hands and arms. Such covering must be of opaque material and maintained in a clean and sanitary condition.

#### **5.44.108: RECORDS; INSPECTIONS:**

- A. Each massage business principal, managing agent, and equity holder shall keep and maintain records for all employees, independent contractors, and persons available to offer massages of the massage business during the term of the person's employment and for at least three (3) years thereafter. These records shall, at a minimum, contain the following: name, age, current address and telephone numbers, description of the duties and responsibilities of the person, a copy of the valid government-issued photographic identity card of the person, and a copy of the person's Utah State massage therapist's license.
- B. The City may inspect each licensed massage business to determine compliance with the provisions of this chapter. The City shall inspect the massage business premises and records at any reasonable time during the hours of operation or apparent activity. The licensed massage business premises, including any places of storage, shall be open and made immediately available for inspection. Where any part of the licensed massage business premises consists of a locked area, the area shall be unlocked and made available for inspection without delay upon request of the South Jordan Police Department or City Business License Division.
- C. A self-employed massage therapist who obtains a massage business premises exemption shall maintain a copy of the exemption. Upon request of the South Jordan Police Department or the Business License Division, a massage therapist who is occupying a massage business premises where massage is offered shall produce the exemption, the massage therapist's state-issued license, and a valid government-issued photographic identity card for inspection.

#### **5.44.109: CIVIL PENALTIES**

- A. Each massage business principal, managing agent, equity holder, and person violating or attempting to violate any provision of South Jordan Municipal Code Chapter 5.44 Massage Businesses or other applicable City, County or State codes, shall be subject to the assessment of civil penalties.
- B. Civil Penalties in the amount of up to \$1,000 may be assessed and shall be considered continuing violations under South Jordan City Municipal Code Section 1.28.040.
- C. Each massage business principal, managing agent, and equity holder shall be strictly liable and subject to civil penalties for violations of any of the provisions of Jordan City Municipal Code Chapter 5.44.

#### **5.44.110: CRIMINAL PENALTIES**

Any person, firm, corporation or entity violating or attempting to violate any provisions of this chapter shall be guilty of a class B misdemeanor and shall be a continuing violation under South Jordan City Municipal Code Section 1.28.040. The minimum mandatory fine for each violation shall be \$1,000, plus any applicable surcharge and 30 days in jail.