

Legistar File No. 93243 Body

DRAFTER'S ANALYSIS: The State of Wisconsin licenses massage therapists but does not regulate massage establishments. The City's previous ordinance combined licensing of massage establishments and massage technicians and managers which was contrary to state statute. This ordinance creates a license and operational requirements for massage establishments only. This ordinance provides an essential enforcement mechanism for those massage establishments that are operating without licensed massage therapists.

The Common Council of the City of Madison do hereby ordain as follows:

1. Section 9.33 entitled "Regulation of Massage Establishments, Massage Technicians, and Employees" of the Madison General Ordinances is repealed and recreated as follows:

"9.33 REGULATION OF MASSAGE ESTABLISHMENTS.

- (1) Purpose. State of Wisconsin licensed massage therapists and bodywork therapists and businesses offering massage therapy services perform an important service in addressing the health and wellbeing of our citizens. Unfortunately, there are businesses that advertise they provide massage therapy and/or other therapeutic services, but they are engaged in various illegal activities which may include prostitution and/or human trafficking. This ordinance IS NOT intended to discourage a legitimately licensed massage therapist or bodywork therapist or massage therapy business from providing their services in the City of Madison. The purpose of this ordinance is to identify and address businesses that engage in the practice of massage therapy without a license and/or are involved in illegal activities which may include prostitution and/or human trafficking. Businesses providing massage therapy yet conducting various types of illegal activity are harmful to the City and the image of the massage therapy profession. The implementation of this ordinance will better enable the City to proactively screen, monitor, and remove businesses that are engaged in illegal activity.
- (2) License Required. No person may operate a message establishment in the City of Madison without a valid license issued under this section for each place of business.
- (3) Definitions. For the purposes of this section:
 - (a) *Building Inspection Division* shall mean the City of Madison Building Inspection Division Director or their designee.
 - (b) *Chief* means the Chief of the City of Madison Police Department or their designee.
 - (c) *City Attorney* means the Madison City Attorney or their designee.
 - (d) *Common Council* means the Common Council of the City of Madison.
 - (e) *Director of Public Health Madison and Dane County* means the Director or their designee.
 - (f) *Establishment or massage establishment* means a place of business having a permanent location wherein private massage therapy or bodywork therapy is practiced, used, or made available.
 - (g) *Licensee* means a person, partnership, corporation, or other legal entity possessing a massage establishment license under this section.
 - (h) *Manager* means the operator of a massage establishment licensed by the City of Madison under this section.

- (i) *Massage room* means the area in the licensed establishment where massage is performed.
 - (j) *Massage therapy or bodywork therapy* means the science and healing art that uses manual actions and adjunctive therapies to palpate and manipulate the soft tissue of the human body in order to improve circulation, reduce tension, relieve soft tissue pain, or increase flexibility. "Massage therapy or bodywork therapy" includes determining whether a referral to another health care practitioner is appropriate. "Massage therapy or bodywork therapy" does not include making a medical, physical therapy, or chiropractic diagnosis.
 - (k) *Massage therapist or bodywork therapist* means a person licensed by the State of Wisconsin pursuant to Wis. Stats. Ch. 460, as it may be amended, and related statutes or rules, who practices, administers, uses, or offers to practice, administer, or use massage therapy or bodywork therapy for a consideration.
 - (l) *Operator* means any person, association, firm, partnership, or corporation licensed by the City of Madison to operate a massage establishment.
 - (m) *Patron* means any person who receives massage therapy or bodywork therapy under such circumstances that it is reasonably expected that they will pay money or give any consideration therefore.
 - (n) *Waiting area* means an area adjacent to the main entrance that is separate from any area where massage therapy or bodywork therapy takes place.
 - (o) *Zoning Administrator* shall mean the City of Madison Zoning Administrator or their designee.
- (4) Massage Establishment License.
- (a) No person, corporation, or other legal entity shall cause, or permit the conduct of a massage establishment without having first obtained a license from the City of Madison in accordance with this section. A separate license shall be acquired for each such establishment.
 - (b) Massage. No person shall administer massage therapy or bodywork therapy within the City of Madison without holding a valid certification as a massage therapist or bodywork therapist from the State of Wisconsin pursuant to § 460.02 of the Wisconsin Statutes, as it may be amended from time to time, which is hereby adopted and incorporated as though fully set forth herein.
 - (c) Employment. No person, corporation or other legal entity shall employ or contract for the services of an individual to provide massage therapy or bodywork therapy who is required to be licensed under § 460.02 of the Wisconsin Statutes, unless the individual is licensed under Chapter 460 of the Wisconsin Statutes.
 - (d) Applicants for a massage establishment license must be 18 years of age or over. No license shall be issued to any person or agent of a corporation or limited liability company who is not 18 years of age or older.
 - (e) No license shall be granted for any establishment that is part of, or internally accessible to, a residence, whether by common hallway or otherwise, nor for any room or rooms in any hotel or motel.
 - (f) No license shall be transferred between locations or persons, and no massage establishment license shall be sold or be subject to transfer of corporate assets or change of corporate officers or directors.
 - (g) No license shall be granted for any establishment, the main entrance to which is within seventy-five (75) feet of the common entry hall to residences, nor for any room or rooms in any hotel or motel, except on approval by the Common

Council, predates the establishment occupancy predates the creation of this section.

- (h) A licensed massage or bodywork therapist may perform massage therapy or bodywork therapy at a massage establishment licensed pursuant to this section, appropriately zoned for the business and possessing a valid certificate of occupancy from the City Zoning Administrator, or at the place of residence or business of a client receiving massage therapy or bodywork therapy.
 - (i) Massage Establishment licenses issued by the City shall be prominently displayed on the premises during all hours of operation.
- (5) Exemptions. This section does not apply to the following classes of individuals while engaged in the duties of their respective professions:
- (a) Physicians, surgeons, psychologists, psychiatrists, chiropractors, osteopaths, masseurs, or physical therapists licensed or registered to practice their respective professions under the laws of the State of Wisconsin, acting under their direction and control.
 - (b) Barbers and cosmetologists licensed under the laws of the State of Wisconsin, provided that such massage practice is limited to the head and scalp.
 - (c) Accredited high schools and colleges and coaches and trainers therein while acting within the scope of their employment.
 - (d) Trainers of any amateur, semi-professional athlete or athletic team and accredited high school and college coaches and trainers while acting within the scope of their employment by a high school or college.
- (6) Application for License.
- (a) Every applicant for a license to maintain, operate, or conduct a massage business shall file an application with the Madison City Clerk. No application shall be considered if it is not complete and does not contain all required information. Where the applicant is a corporation, the application shall be made by an agent, registered as such, who has been a resident of the City of Madison for at least ninety (90) days preceding the application.
 - (b) All applications shall include:
 - 1. A non-refundable application fee of three hundred dollars (\$300.00).
 - 2. The location, mailing address, and zoning classification of the proposed establishment.
 - 3. For an individual, or for each member of a partnership or joint venture, or an agent of a corporation, the following shall be provided:
 - a. Full name and present address; two most previous addresses, and dates of residence at each.
 - b. Height, weight, color of hair and eyes, written proof of date of birth, and submission of a copy of their government-issued ID.
 - c. Business or occupation history for the two (2) years immediately preceding the application.
 - d. Disclosure of the revocation or suspension of any previous or similar licenses, the reasons for such revocation or suspension, and the name and address of the authority which issued and revoked or suspended the license.
 - e. Disclosure of any convictions for crimes or ordinance violations, other than non-criminal traffic offenses, within the three (3) years

immediately preceding the application together with the name and address of the court or courts where such convictions occurred.

4. If the applicant is a corporation, the name and addresses of each officer, director and stockholder of the corporation together with a disclosure of ownership interests of each and of whether or not each such officer, director or stockholder has any interest in, holds office in, or owns stock in any other corporation conducting any similar business in the State of Wisconsin. Any application submitted on behalf of a corporation shall be made by an agent registered as such who shall have been a resident of the State of Wisconsin for at least ninety (90) days prior to the date of application.
5. All phone numbers of the proposed establishment including any unlisted and unpublished numbers.
6. The current street and mailing address and current telephone numbers of the corporation, limited liability company, or partnership.
7. The names, addresses, telephone numbers, a copy of a government issued ID, and State of Wisconsin Department of Safety and Professional Services credential numbers of all persons employed by the applicant to perform massages or bodywork at the proposed establishment at the time of application.
8. The name, address, state massage license number, phone number(s), and a copy of one (1) form of government issued ID of each massage therapist or bodywork therapist other than those employed by the applicant, who may, by virtue of any arrangement with the applicant, practice administer, or offer to practice or administer massage therapy or bodywork therapy at the licensed premises.
9. The current name, current street and mailing address, and current telephone number of the landlord or property owner of the property from which the massage business will be conducted.
10. A floor plan of the establishment which details with particularity the rooms in which massage therapy or bodywork therapy will be practiced, the reception area, restrooms, and any other areas accessible to patrons, and entrances and exits including a description of how patrons will enter and leave the premises.
 - a. The planned hours of operation.
 - b. The number of customers expected on a daily basis.
 - c. The legal occupancy limit of the premises.
 - d. The number of off-street parking spaces available at the premises.
11. A policy of malpractice insurance written by an insurance company licensed to do business in the State of Wisconsin and verified by a certificate of insurance in an amount of no less than one million dollars (\$1,000,000.00) in coverage for each employee.
12. The applicant's tax identification number.
13. Such other reasonable and pertinent information the common council may from time to time require.
14. Written declaration by the applicant or its authorized agent that the information contained in the application is true and correct, said declaration being duly dated and signed.

(7) Granting of Licenses.

- (a) Administrative Approval. No massage establishment license shall be granted unless the application has been reviewed by the Building Inspection Division Director, the Zoning Administrator, the Chief of Police, the City Attorney, the Fire Inspector, and the Director of Public Health Madison and Dane County, or their designees. Within 10 (ten) days from the filing of an application, the City Clerk shall refer copies of the application to these departments for their review, and where appropriate, inspection.
1. Prior to Common Council approval, the Chief shall certify that the application has successfully completed a background check and shall make a recommendation to the Common Council as to whether the application should be approved and a license issued.
 2. Prior to Common Council approval, the City Attorney shall certify that the application and applicant meet the requirements set forth in this ordinance.
 3. Prior to Common Council approval, the Director of Building Inspection, the Zoning Administrator, Fire Inspector, and Director of Public Health Madison and Dane County, or their designees, shall certify that the premises complies with all applicable laws and regulations, including applicable building and fire code requirements.
- (b) Common Council Approval. Public Hearing. License applications complying with the provisions of this section shall be forwarded to the Common Council for a public hearing. The Common Council shall review the application, the applicant's qualifications, and all other relevant factors, and determine whether to grant or deny the license application.
- (c) License Fee. Upon approval by the Common Council, the applicant must pay the yearly license fee of three hundred dollars (\$300.00) in full prior to the issuance of the license.
- (d) Reasons for Denial. The Common Council may deny an application for a message establishment license upon determination that the applicant does not meet the qualifications for possessing such license. A denial determination may be based on any relevant factors, including, but not limited to, those listed in this subsection. Within ten (10) days of a denial, the applicant shall receive written notification setting forth the specific reasons for the denial. Non-exclusive circumstances supporting denial:
1. The operation of the massage establishment as proposed by the applicant, if permitted, would not comply with all applicable federal, state or local ordinances, rules or regulations, including, but not limited to, the building, fire or zoning code of the City of Madison; or
 2. The applicant, including any partner, officer, director, or shareholder, or any other person who will be directly or indirectly engaged in the management and operation of the massage establishment has been convicted of:
 - a. A felony or misdemeanor conviction for bodily harm; or any offense involving sexual misconduct including, but not limited to, prostitution, soliciting for a prostitute, keeping a place of prostitution or other offenses involving moral turpitude, provided that such conviction substantially relates to the licensed activity.
 - b. A misdemeanor or ordinance violation based upon conduct or involvement in the massage business or similar or related

business activity within the City or any other City, Village, or Town, or had a massage business license denied, revoked or suspended by the City, or any other jurisdiction.

3. The information required on the application is incomplete or the applicant has knowingly, or with intent to deceive, made a false, misleading, or fraudulent statement of fact in the application or in any other document required by the City in conjunction therewith.
 4. The applicant has not resided in Wisconsin for at least ninety (90) days prior to the date of application.
- (e) Appeals of Application Denials. Any applicant whose application for a massage establishment license has been denied by the Common Council may appeal such determination, in writing, pursuant to Madison General Ordinance §9.49.

(8) Operation of Massage Establishments.

- (a) Each massage establishment shall at all times maintain and comply with the following operational regulations.
1. The licensee shall comply with all Madison General Ordinances.
 2. The licensee and establishment shall permit inspections on the premises at any time during business hours as referenced in subsection eight (8).
 3. There shall be on the licensed premises at all times a massage therapist properly licensed pursuant to Wisconsin Statutes. The licensee of the establishment shall personally supervise the conduct of the business thereon and shall not violate or permit any technician or employee in his or her employ to violate any provision of this chapter. A violation of any provision of this chapter by an officer, employee or technician shall constitute a violation by the licensee of the establishment.
 4. There shall only be one (1) sign posted at the main entrance. The sign shall be non-flashing.
 5. No licensed premises shall be open for business except between the hours of 7:00 a.m. and 10:00 p.m.
 6. All massage therapists or bodywork therapists shall be validly licensed pursuant to Wis. Stats. Ch. 460 as a condition of employment by the establishment as a massage therapist or bodywork therapist.
 7. A licensed massage therapist or bodywork therapist shall be present on the establishment premises at all times during hours of operation, shall administer all massage therapy or bodywork therapy at the licensed premises.
 8. No person under the age of eighteen (18) years shall be permitted on the establishment premises unless accompanied by their parent, guardian, or spouse, or upon written authorization executed by the underage person's parent, guardian, or spouse.
 9. No intoxicating beverages or substance included in Wis. Stat. Ch. 961, sub. II, except those possessed pursuant to a valid prescription from a licensed professional, shall be permitted in the licensed establishment.
 10. The establishment shall provide a waiting area for patrons separate from any area wherein massages are given. There shall be direct access to this area from the main entrance or from the hallway connected only to the main entrance.

11. The licensee shall keep current records of the name, address, and proof of state licensure of each massage and bodywork therapist, and at least one (1) copy of a form of government-issued ID of each of its massage therapists and bodywork therapists, as well as the names and addresses of its agents, managers, and employees. These records shall include the dates of employment and termination date if applicable. Such records shall be open to inspection by any of the personnel listed in the above section.
 12. The establishment shall report any change of fact required on the application form and all personnel changes to the City Clerk within 10 days after such change.
 13. The licensee shall have and maintain in full force and effect during the license term a policy of malpractice insurance written by an insurance company licensed to do business in the State of Wisconsin and verified by a certificate of insurance in an amount of no less than one million dollars (\$1,000,000.00) in coverage per person.
 14. Rooms in which massage therapy or bodywork therapy is practiced or administered shall have at least seventy (70) square feet of clear floor space.
 15. The doors to the business and to the individual massage therapy rooms shall not be locked or blocked or obstructed from either side during business hours.
 16. Massage therapy or bodywork therapy tables shall have a surface which is impervious to liquids and shall be furnished with linen, either disposable or washable and which are changed for each patron.
 17. It shall be unlawful for any person, corporation, or other legal entity to hinder, delay, prevent, or refuse to permit any lawful inspection of a licensed massage establishment pursuant to subsection 8.
 18. The City-issued establishment license shall be conspicuously displayed on the premises during all hours of operation.
- (9) Inspection of Premises. For the purpose of ascertaining compliance with this section and conducting routine inspections, police officers, health inspectors, fire inspectors, and building inspectors shall have the right of entry onto the premises of any massage establishment during business hours. Application for and acceptance of a license under this section constitutes consent to such inspection. Any inspection shall include areas leased, subleased, or subject to any other business of the licensed premises.
- (10) Public Nuisance. Operating a massage establishment in the City of Madison without first obtaining a Massage Establishment License, and/or allowing massage or bodywork therapy by an unlicensed therapist is a public nuisance and may be enjoined by the City.
- (11) Suspension, Revocation, and Nonrenewal of License.
- (a) Grounds. Any license issued under this section may be suspended or revoked for cause by the common council after notice to the licensee and a hearing. Cause includes, but is not limited to any of the following:
 1. The licensee has made or recorded any statement required by this section knowing it to be false, fraudulent, or intentionally deceptive.
 2. The licensee has violated any provision of this section.
 3. The licensee has violated any provision of the Madison General Ordinances.

4. A conviction of an offense under Wis. Stats. Ch. 944 by any massage therapist, bodywork therapist, licensee, or other employee of the establishment.
 5. A conviction of an offense against the person or property of a patron by any massage therapist, bodywork therapist, licensee or other employee of the establishment.
 6. Any massage therapist, bodywork therapist, licensee or other employee who has been fined under Wis. Stats. § 460.15, or whose license has been the subject of discipline by the applicable credentialing board or the Wisconsin Department of Safety and Professional Services.
- (b) Procedure on Suspension and Revocation. Before suspending or revoking any license, licensee shall be given written notice stating the grounds for suspension or revocation. The notice may be served via personal service or certified mail. The notice shall be served upon the licensee at least 15 (fifteen) days prior to the date of the hearing and shall state the time and place thereof. If the licensee fails to appear at the hearing, the allegations in the notice shall be deemed true and the Council shall revoke the license. If the licensee appears for the hearing, the licensee shall be entitled to be heard, to be represented by counsel, to cross-examine opposing witnesses and to present their own witnesses. The Common Council shall decide the matter and shall prepare a written decision which shall be filed with the City Clerk and a copy thereof mailed to the licensee within twenty (20) days after the hearing.
- (c) Nonrenewal. A massage establishment license may be nonrenewed based on any of the grounds identified in this section. Each year, the Chief of Police shall identify any license for nonrenewal and provide that recommendation to the Common Council for determination on renewal. If the Common Council determines it will not renew, a notice shall be sent to the licensee stating with specificity the grounds for nonrenewal and informing the licensee of the right to a hearing. The licensee shall have ten (10) days to submit a written request for a hearing. The hearing shall be held in accordance with the provisions of this subsection governing hearings on revocations and suspensions.
- (d) Notice and Appeal. The City Clerk shall notify the licensee in writing of the Common Council’s decision within twenty (20) days after the Council makes its determination. Any appeal of the Common Council’s decision shall be by writ of certiorari to Dane County Circuit Court and must be commenced within twenty (20) days of the date of the notice or be forever barred.
- (12) Penalty. Any person violating any provision of this section shall be subject to a forfeiture of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500.00). Each violation and each day on which a violation occurs or continues shall constitute a separate offense.

2. Subsection (4) entitled “Issuance of Citations” of Section 1.08 entitled “Issuance of Citations and Complaints for Violations of Certain Ordinances and Providing a Schedule of Cash Deposits” of the Madison General Ordinances is amended by amending therein the following:

<u>“Enforcement Official</u>	<u>Ordinance Chapter or Section and Title</u>
Fire Chief, their designated Chief Officers and Officers assigned to Fire Prevention and Investigation Divisions.	Section 3.20, Emergency Management; <u>Section 9.33, Regulation of Massage Establishments;</u>

	Chapter 34, Fire Prevention Code; Section 38.07(21), Exceeding Lawful Occupancy Capacity.
Director of Public Health Madison and Dane County or their designee and Police Department.	Chapter 7, Public Health; Section 9.05, Adult Entertainment Establishments; <u>Section 9.33, Regulation of Massage Establishments</u> ; Section 23.05, Smoking Prohibited in Certain Public Areas; Section 23.12, Transient Hotels and Motels Regulated; Section 23.202, Age Restrictions on Hemp-Derived THC Products; Section 23.38, Possession of Tobacco Products by Children; Section 23.385, Sale of Tobacco Products to Children Forbidden; Section 23.44, Consumers to Be Offered Selection of Containers; Section 23.61, Internet Solicitation of Unlicensed Regulated Businesses; Section 23.65, Pet Sales Prohibited; Section 23.66, Prohibiting Declawing Procedures.
Director of the Building Inspection Division of the Department of Planning and Community and Economic Development or designee.	Section 7.55, Outdoor Wood Boilers Prohibited; Section 8.15, Regulating Private Use of Greenways and Park Lands, and the Southwest Bike Path; Section 9.13, Street Vending Licenses; Section 9.135, Sidewalk Cafe and Roadway Cafe Expansion Licenses; Section 9.136, Street Vending on the State Street Mall/Capitol Concourse; Section 9.25, Licensing of Landlords of Chronic Nuisance Properties; <u>Section 9.33, Regulation of Massage Establishments</u> ; Section 9.54, Equipment Placement on Sidewalks and Terraces, Permits for Information Tables and Expressive Street Vending; Section 12.128(14), Off-Driveway Parking; Section 12.145(1)(d), No Street Vending from Parking Meter; Chapter 22, Consumer Protection and Weights and Measures; Section 23.29, Noxious Weed Control; Section 24.04(7), Noise Disturbances, Refuse Collection Vehicles; Section 24.08, Noise Control Regulation; Chapters 10, 18, 19, 27, 28, 29, 30, 31, 37; Section 33.24 (Urban Design Commission,) and Chapter 41 (Historic Preservation).

EDITOR’S NOTE:

Section 9.33 entitled “Regulation of Massage Establishments, Massage Technicians, and Employees” of the Madison General Ordinances currently reads as follows:

“9.33 REGULATION OF MASSAGE ESTABLISHMENTS, MASSAGE TECHNICIANS AND EMPLOYEES.

(1) It shall be unlawful for any person, corporation or other legal entity to suffer, cause or permit the operation of a massage establishment or for a person to operate as a massage technician, agent, manager or employee, except in strict compliance with this section.

(2) Definitions. For the purposes of this section:

- (a) Massage means any process or procedure consisting of rubbing, stroking, kneading or tapping, by physical or mechanical means, upon the external parts or tissues of the body of another for a consideration.
- (b) Sexual or genital parts shall include the genitals, pubic area, buttocks, anus, or perineum of any person, or the vulva or breasts of a female.
- (c) Massage establishment means a place of business wherein private massage is practiced, used or made available as a principal use of the premises.
- (d) Massage technician means a person who practices, administers or uses or offers to practice, administer or use massage for a consideration.
- (e) Patron means any person who receives a massage under such circumstances that it is reasonably expected that they will pay money or give any consideration therefore.
- (f) Operator means any person, association, firm, partnership or corporation licensed by the City to operate a massage establishment.
- (g) Manager means the operator or an agent licensed under this section who shall not be licensed as a massage technician.
- (h) Waiting area means an area adjacent to the main entrance that is separate from any area where massages are given.
- (i) Massage room means the area where private massage is performed.

(3) Massage Establishment License.

- (a) No person, corporation, or other legal entity shall suffer, cause or permit the conduct of a massage establishment without having first obtained a license therefore from the Common Council. A separate license shall be acquired for each such establishment.
- (b) No license shall be granted for any establishment, the main entrance to which is within seventy-five (75) feet of the main entrance to a residence or of the common entry hall to residences, nor for any room or rooms in any hotel or motel.
- (c) Applications shall be made in writing on forms supplied by the City Clerk. If application is made for a location not previously licensed, the City Clerk shall, by regular mail, notify all property owners and registered electors within two hundred fifty (250) feet of the proposed location at least ten (10) days before the hearing on the granting of such license.
- (d) All applications shall include:
 - 1. A nonrefundable fee of three hundred two dollars and fifty cents (\$302.50);
 - 2. The location and mailing address of the proposed establishment;

3. For an individual or for each person of a partnership or joint venture or agent of a corporation:
 - a. Name and present address;
 - b. The two immediately previous addresses, and dates of residence at each;
 - c. Height, weight, color of hair and eyes, Social Security number, written proof of age, full set of fingerprints and two (2) photographs not less than thirty (30) days old, and at least 2" x 2";
 - d. The business or occupation for the two (2) years immediately preceding the date of application;
 - e. Whether a similar license had been revoked or suspended and, if so, the reason therefore and the location thereof;
 - f. Whether convicted of any crime or ordinance violation other than traffic offenses within the past three (3) years and, if so, a listing of the same and the locations thereof;
 4. If the applicant is a corporation, the names and addresses of each officer and director and of the stockholders of such corporation, together with the extent of the ownership of each, and a statement whether such officer, director or stockholder holds office or stock in any other corporation conducting a similar business in the State of Wisconsin. Such application shall be made by an agent registered as such who shall have been a resident of the City of Madison for at least ninety (90) days;
 5. All phone numbers of the proposed establishment;
 6. The names, addresses and phone numbers of all persons employed by the applicant at the proposed establishment at the time of application;
 7. Certification of compliance of the proposed premises with the Building Code and Fire Code, or in the alternative, applicant shall file a bond assuring that any work required to be done to bring the premises into compliance therewith shall be accomplished prior to the opening of business. Compliance with such Codes shall be conditions precedent to the opening of business.
 8. The application shall contain a statement signed by the applicant and each individual of a partnership or joint venture that all information contained therein is true and correct;
- (e) The issuance of this license shall allow for the licensing of up to three (3) additional managers for each establishment.

(4) Massage Technician's and Manager's License.

- (a) No person shall act or operate for a consideration as a massage technician or manager without having first obtained a permit to do so.
- (b) No person shall be granted a license to administer massages unless such person is:
 1. A graduate of a recognized massage or therapy school. A recognized massage or therapy school is any school or institution which has for its primary purpose the teaching of the theory, method, and/or profession of massage and which requires work of not less than 70 hours to be given in not less than three (3) calendar months before the student is entitled to a diploma or certificate of graduation.
 2. A member in good standing of the American Massage and Therapy Association or other recognized professional massage organization.
 3. Free of all communicable diseases as required by the license application.
 4. Eighteen (18) years of age or over.

- (c) Applications for permits shall be in writing on forms supplied by the City Clerk and shall include:
1. A nonrefundable fee of sixty-two dollars and fifty cents (\$62.50);
 2. Applicant's full name and present address, Social Security number, written proof of age in excess of eighteen (18) years, height, weight, color of hair and eyes, full set of fingerprints and two (2) photographs not less than thirty (30) days old and at least 2" x 2";
 3. For technicians only, name and address of the recognized school attended by such person with a copy of the diploma or certificate of graduation as required by Section (4)(b)1. above;
 4. Applicant's two (2) previous addresses and dates of residence at each;
 5. The applicant's business, occupation or employment during the two (2) years immediately preceding date of application;
 6. Whether the applicant has had a similar permit revoked or suspended and, if so, the reason therefore and the location thereof;
 7. Whether the applicant has been convicted of any crime or ordinance violation other than traffic offenses within the past three (3) years and, if so, a listing of the same and the locations thereof;
 8. For technicians only, a certificate from a licensed physician that the applicant has been examined and found to be free of communicable diseases and showing that such examination occurred less than thirty (30) days prior to the date of application;
 9. The name and address of the licensed massage establishment by which the applicant is employed;
 10. A statement signed by the applicant that all information contained therein is true and correct.

(5) Granting of Licenses.

- (a) Licenses may be granted by the Common Council after a hearing at which the applicant may be heard at applicant's option. At least ten (10) days' notice of such hearing shall be given to the applicant.
- (b) The Common Council shall grant a license within thirty (30) days of application unless it is shown, for a massage establishment license, that the operation as proposed by the applicant does not comply with all applicable State Laws and City Ordinances, and for all licenses that the applicant or any partner or any officer, director or stockholder of a corporate applicant has been convicted in a court of competent jurisdiction of an offense under Wis. Stat. ch. 944, or involving substances included in Wis. Stat. ch. 161, sub. II, or of an offense against the person or property of another within the past three (3) years, that the information required on the application is incomplete or that any applicant has knowingly or with the intent to deceive made any false, misleading or fraudulent statement of fact in the application or any other document required by the City in conjunction therewith, or that the applicant has not resided in the City for at least ninety (90) days prior to date of application.
- (c) In the event of denial, the applicant shall receive written notification thereof setting forth the reasons for the denial within ten (10) days after such denial.
- (d) All licenses and permits granted by the Council shall expire on the thirtieth (30th) day of June following their issuance. Reapplication therefore shall be not less than sixty (60) days prior to such expiration date and shall be the sole responsibility of the applicant.

- (e) No license shall be transferred between locations or persons and no massage establishment license shall be sold or be subject to transfer of corporate assets or change of corporate officers or directors.
- (f) The massage technician's license does not entitle the holder to operate or manage a massage establishment unless the technician is the sole proprietor of the establishment and employs no other person in the business.

(6) Regulations of Operations and Licenses.

- (a) Each establishment shall at all times maintain and comply with the following regulations:

1. General Regulations:

- a. The establishment shall comply with all City Codes;
- b. Only one (1) nonflashing business sign clearly identifying the establishment as a massage establishment shall be posted at the main entrance. No description of services shall be permitted on such sign;
- c. No establishment shall be open for business between the hours of 10:00 p.m. and 8:00 a.m.;
- d. Only massage technicians licensed pursuant to this section shall be employed as massage technicians by the establishment;
- e. The practice of all massage technicians employed by the establishment shall be limited to the licensed premises;
- f. No person under the age of eighteen (18) years shall be permitted on the premises;
- g. No intoxicating beverages or substance included in Wis. Stat. ch. 161, sub. II, shall be permitted in the licensed establishment. Food shall be permitted only when there is no charge therefor and when a food preparation area, including sink with hot and cold running water, is a part of the establishment;
- h. The establishment shall provide a waiting area for patrons separate from any area wherein massages are given. There shall be direct access to this area from the main entrance or from the hallway connected only to the main entrance;
- i. The operator or a licensed manager shall be present on the premises at all times during hours of operation and shall be responsible for the operation of the establishment;
- j. The establishment shall permit inspections of the premises at any time during business hours by Building Inspectors, Fire Inspectors, Health Inspectors, or personnel of any law enforcement agency;
- k. The establishment shall keep current records of the names and addresses of its massage technicians, agents, managers and employees and the date of employment and termination of each. Such records shall be open to inspection by any of the personnel listed in Subparagraph j. above;
- l. The establishment shall report any change of fact required on the application form and all personnel changes to the City Clerk within ten (10) days after such change.

- (b) Each technician shall at all times comply with the following regulations:

- 1. The technician shall practice only on the premises of a licensed massage establishment;

2. The technician shall massage only patrons over the age of eighteen (18) years;
3. No technician shall administer a massage:
 - a. If said technician believes, knows, or should know that they are not free of any contagious or communicable disease or infection;
 - b. To any massage patron exhibiting any skin fungus, skin infection, skin inflammation or skin eruption;
4. The technician shall report any change of fact required in the application form to the City Clerk within ten (10) days after such change.
5.
 - a. It shall be unlawful for any person, in a massage establishment, to place his or her hand or hands upon, to touch with any part of his or her body, to fondle in any manner, or to massage, a sexual or genital part of any other person.
 - b. It shall be unlawful for any person, in a massage establishment, to expose his or her sexual or genital parts, or any portion thereof, to any other person. It shall also be unlawful for any person in a massage establishment, to expose the sexual or genital parts, or any portion thereof, of any other person.
 - c. It shall be unlawful for any person, while in the presence of any other person in a massage establishment, to fail to conceal with a fully opaque covering, the sexual or genital parts of his or her body.
 - d. It shall be unlawful for any person owning, operating or managing a massage establishment, knowingly to cause, allow or permit in or about such massage establishment, any agent, employee, or any other person under her/his control or supervision to perform such acts prohibited in Subparagraphs a., b. or c. of this section.
 - e. It shall be unlawful for any person in a massage establishment, for a consideration, to offer to perform or to make available, permit or in any way participate in the performance of any act prohibited by Subparagraphs a., b. or c. hereof.

(7) Revocation or Suspension of License.

- (a) Grounds. The license granted herein may be revoked or suspended for up to six (6) months by the Common Council.
 1. If the applicant has made or recorded any statement required by this section knowing it to be false or fraudulent or intentionally deceptive;
 2. For the violation of any provision of this section, except for establishment license matters involving violations of City Codes, in which case the license shall be revoked after the second conviction thereof in any license year;
 3. If a technician's or manager's license, after one (1) conviction of any offense under Wis. Stat. ch. 944, or of an offense involving substances included in Wis. Stat. ch. 161, sub. II, or of an offense against the person or property of a patron, whether such occurred on or off the premises of the establishment;
 4. If an establishment license, after one (1) conviction of any establishment personnel of an offense under Wis. Stat. ch. 944, or of an offense against the person or property of a patron or of an offense involving substances in Wis. Stat. ch. 161, sub. II, where there is shown the participation or knowledge of any other establishment personnel or of any individual within the business structure of the applicant.

- (b) Notice and Hearing. No license shall be revoked or suspended by the Common Council except upon due notice and a hearing to determine whether grounds for such action exist. The notice shall be in writing and shall state the grounds of the complaint against the licensee. The notice shall be served upon the licensee at least fifteen (15) days prior to the date of the hearing and shall state the time and place thereof. The licensee shall be entitled to be heard, to be represented, to cross-examine opposing witnesses, and to present witnesses in his or her own behalf under the subpoena of the Common Council, if such is required. The hearing shall be stenographically recorded and a copy of the transcript shall be available to the licensee at the expense of the licensee. The Common Council shall decide the matter and shall prepare a written decision which shall be filed with the City Clerk and a copy thereof mailed to the licensee within twenty (20) days after the hearing.
- (8) Exceptions. This section shall not apply to the following classes of individuals while engaged in the duties of their respective professions:

 - (a) Physicians, surgeons, chiropractors, osteopaths, masseurs, or physical therapists licensed or registered to practice their respective professions under the laws of the State of Wisconsin, or nurses registered under the laws of the State of Wisconsin, acting under their direction and control.
 - (b) Barber shops and beauty parlors, barbers and beauticians licensed under the laws of the State of Wisconsin, provided that such massage as is practiced is limited to the head and scalp.
 - (c) Accredited high schools and colleges and coaches and trainers therein while acting within the scope of their employment.
- (9) Operation Without a License a Public Nuisance. The operation of a massage establishment without a license or the activity of an individual as a massage technician without a license is deemed a public nuisance and may be enjoined by the City.
- (10) Penalty. Any person violating any provision of this section shall be subject to a forfeiture of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Each day of violation of operating without required licenses or permits and each violation of any provision hereof shall constitute a separate offense.
- (11) Severability. The provisions of any part of this Ordinance are severable. If any provision or subsection hereof or the application thereof to any person or circumstances, is held invalid, the other provisions, subsections and applications of such ordinance to other persons or circumstances shall not be affected thereby. It is declared to be the intent of this Ordinance that the same would have been adopted had such invalid provisions, if any, not been included herein.
- (12) Effective Date. This ordinance shall be effective upon publication except that establishments in full operation on such date shall comply with its provisions not later than April 15, 1975.