

ORDINANCE NO. 12-2243

**AN ORDINANCE REPEALING CHAPTER 22, ARTICLE IX,
DIVISION 1 AND 2, SAUNAS AND MASSAGE PARLORS,
OF THE MUNICIPAL CODE OF THE CITY OF BLAINE
AND REGULATING THERAPEUTIC MASSAGE WITHIN
THE CITY OF BLAINE MINNESOTA**

THE CITY OF BLAINE DOES ORDAIN: (Added portions are underscored and deleted portions are shown in brackets with overstrike.)

~~DIVISION 1. -- GENERALLY~~

~~[Sec. 22-421. Definitions.~~

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

~~*Massage* means the rubbing, stroking, kneading, tapping, or rolling of the body with the hands or other devices or implements, for the exclusive purposes of relaxation, physical fitness, or beautification, and for no other purposes.~~

~~*Massage parlor* means any rooms where any person for a fee may receive from another person a massage, or any rooms from which a masseur or masseuse is dispatched by telephone or otherwise, for the purpose of giving a massage, provided that no massage for a fee shall be given except in a licensed premises.~~

~~*Massage therapist* means a person who practices massage and can demonstrate to the city:~~

- ~~(1) A minimum of 100 hours of certified therapeutic massage training from a massage therapy school approved by the city and recognized by a national or state professional therapeutic massage organization; and~~

~~(2) A current membership, in good standing, in a bona fide national or state therapeutic massage organization with a written and enforceable code of ethics, also approved by the city.~~

~~*Masseur* means a male person who practices massage.~~

~~*Masseuse* means a female person who practices massage.~~

~~*Sauna* means any steam bath or heat bathing room for the purpose of bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing, or reducing agent, and for which a fee is charged.~~

~~Sec. 22-422 - Violations and penalties.~~

~~Any person violating the provisions of this article is guilty of a misdemeanor, and shall be punished by a fine not to exceed \$1,000.00 or by imprisonment not to exceed 90 days, or both, together with the costs of prosecution. Each violation of this article shall constitute a separate offense. Any term of imprisonment imposed for any violation by a corporation shall be served by the senior resident officer or managing agent of the corporation. Conviction of a violation of this article shall be grounds for revocation of any license issued under this article.~~

~~State law reference—Penalty for ordinance violations, Minn. Stat. §§ 410.33, 412.231, 609.0332, 609.034.~~

~~Sec. 22-423 - Massage distinguished.~~

~~The practice of massage is hereby declared to be distinct from the practice of medicine, surgery, osteopathy, chiropractic, physical therapy, or podiatry and persons duly licensed in this state to practice medicine, surgery, osteopathy, chiropractic, physical therapy, or podiatry and nurses who work solely under the direction of any such persons, athletic directors, and trainers are hereby expressly excluded from the provisions of this article. Beauty culturists and barbers who do not give or hold themselves out to give massage treatments, other than is customarily given in such shops or places of business for the purpose of beautification only, shall be exempt from the provisions of this article. Massage therapists shall also be exempt from the provisions of this article.~~

~~Sec. 22-424 - Inspection.~~

~~Any duly authorized law enforcement officer, health officer, or building official of the city or any other agency health officer, or building official of the city or any other agency having jurisdiction shall be allowed to inspect the licensed premises at any times and hours in which any person is present on the licensed premises to ensure compliance with all provisions of this article.~~

~~Sec. 22-425 - Business hours.~~

~~No customers or patrons shall be allowed to enter a licensed premises after 10:00 p.m. and before 8:00 a.m. daily. No customers or patrons shall be allowed to remain upon the licensed premises after 10:30 p.m. and before 8:00 a.m. daily.~~

~~Sec. 22-426 - Construction and maintenance of premises.~~

~~(a) All sauna rooms, massage parlors, and all restrooms and bathrooms used in connection therewith shall be constructed of materials which are impervious to moisture, bacteria, mold, or fungus growth. The floor to wall and wall to wall joints shall be constructed to provide a sanitary cove with a minimum radius of one inch.~~

~~(b) All restrooms used in connection with saunas or massage parlors shall be provided with mechanical ventilation with three cfm per square foot of floor area, a minimum of 30 foot candles of illumination, a hand washing sink equipped with hot and cold running water under pressure, sanitary towels, and a soap dispenser.~~

~~(c) Doors on sauna rooms or massage parlor rooms shall not be locked or capable of being locked. Locks, latches, or other devices intended to secure a door so as to prevent it from being opened by any person from either side of the door with or without a key cannot be present on any doors of sauna rooms or massage parlor rooms.~~

~~Sec. 22-427 - Regulation of masseurs and masseuses.~~

~~(a) Any person acting as a masseur or masseuse in a sauna or massage parlor shall have his or her license displayed in a prominent place on the licensed premises.~~

~~(b) All saunas and massage parlors shall be open to the general public. Only a licensed masseur shall be allowed to massage male customers and only a licensed masseuse shall be allowed to massage female customers.~~

~~(c) Whenever a massage is given, it shall be required by the masseur or masseuse that the person who is receiving the massage shall have his or her breasts, buttocks, anus, and genitals covered with an appropriate nontransparent covering.~~

~~(d) Any masseur performing any massages shall at all times have his buttocks, anus, and genitals covered with a nontransparent material.~~

~~(e) Any masseuse performing massages shall at all times have her breasts, buttocks, anus, and genitals covered with a nontransparent material.~~

~~(f) All individuals who practice massage shall wash their hands thoroughly before each massage.~~

~~(g) No person suffering from a communicable disease shall work or be employed in a licensed business. No person suffering from a communicable disease to the knowledge of the owner, custodian, or employees of a licensed business shall be accommodated as a patron therein.~~

~~Sec. 22-428 - Restrictions involving minors.~~

~~No person under the age of 18 shall be permitted at any time to be in or on the licensed premises as a customer, guest, or employee, unless accompanied by his parent or guardian.~~

~~Sec. 22-429 - 450 - Reserved~~

DIVISION 2. - LICENSES

~~Sec. 22-451 - Required.~~

~~(a) *Business license.* It shall be unlawful for any person to operate a sauna or a massage parlor, either exclusively or in connection with any other business enterprises, without obtaining a business license as provided in this article. Any person who conducts such business either in whole or in part by arranging for massage by means of telephonic, verbal, or written~~

~~communication shall administer such massages only on a licensed premises, if such massage is to be administered within the city. A separate license must be obtained for each place of business. Licenses are not transferable. No more than three business licenses issued under this article may be in force at any one time.~~

~~(b) *Masseur or masseuse license.* It shall be unlawful for any person to perform massage services within the city without a masseur or masseuse license as provided under this article. Licenses are not transferable.~~

~~Sec. 22-452 - Exceptions.~~

~~A license is not required under this article as follows:~~

~~(1) For premises on which saunas or massages are provided incidental to the use of exercise and recreational equipment and facilities situated on the same premises, provided that the sauna or massage facilities shall occupy floor area equivalent to not more than ten percent of the floor area used for the exercise and recreational equipment and facilities.~~

~~(2) For hotels, motels, and apartment buildings in which saunas but not massages are provided incidental to the rental of rooms and the use of which is limited to tenants of the respective facilities. A tenant is defined as a person using a hotel, motel or apartment building as overnight lodging.~~

~~(3) For premises at which massage parlors or sauna facilities are provided by a nonprofit corporation or association; provided, however, that such corporation or association is duly organized under the laws of the state for civic, fraternal, social or business purposes which organization shall have more than 50 members and which shall for more than two years prior to application have owned, hired, or leased a building or space in a building of such extent and character as may be suitable and adequate for the reasonable and comfortable accommodation of its members and whose affairs and management are conducted by a board of directors, executive committee, or other similar body chosen by the members at a meeting held for that purpose, none of whose members, officers, agents, or employees are~~

~~paid directly or indirectly from the services offered by the organization to the members or their guests, beyond the amount of such reasonable salary or wages as may be fixed and voted each year by the directors or other governing body.~~

~~(4) For bona fide health/sports establishments which meet the following criteria:~~

~~a. The primary purpose of the establishment is health and fitness; massage or sauna service is subsidiary.~~

~~b. No more than 20 percent of the establishment revenue is derived from massage or sauna.~~

~~c. The financial records of the establishment are at all times available to the city for inspection.~~

~~d. The establishment has an ongoing membership which list is available to city officials for inspection at any time.~~

~~(5) For hospitals, sanitariums, rest homes, nursing homes or other approved institutions established for the hospitalization or care of human beings which are duly licensed under the provisions of Minn. Stat. ch. 144.~~

~~Sec. 22-453 – Business license application.~~

~~Applications for business licenses provided in this article shall be made to the city clerk on such forms as required by the city. In addition to such information as the city clerk may require, the application shall also include:~~

~~(1) Whether the applicant is a natural person, a corporation, a partner, or other form of organization.~~

~~(2) If the applicant is a natural person:~~

~~a. The true name, place and date of birth, street address, and phone number of applicant.~~

~~b. Whether the applicant is a citizen of the United States.~~

~~c. Whether the applicant has ever used or been known by a name other than his true name; and if so, what was such name and information concerning dates and places where used.~~

~~d. The name of the business if it is to be conducted under a designated name or style other than the full individual name of the application; in such case, a copy of the certification as required by Minn. Stat. ch. 333, certified by the clerk of the district court, shall be attached to the application.~~

~~e. The street address at which applicant has lived during the preceding five years.~~

~~f. The kind, name, and location of every business or occupation the applicant has been engaged in during the preceding five years.~~

~~g. The names and addresses of the applicant's employer and partners, if any, for the preceding five years.~~

~~h. Whether the applicant has ever been convicted of any crime. If so, the applicant shall furnish information as to the time, place, and offense for all applicants.~~

~~i. The physical description of the applicant.~~

~~j. Whether the applicant has any training or experience in performing massage services and if so, applicant shall furnish copies of any professional certificates and a summary of training and experience.~~

~~(3) If the applicant is a partnership:~~

~~a. The names and addresses of all partners and all information concerning each partner as is required of an individual applicant in subsection (2) of this section.~~

~~b. The name of the managing partners and the interest of each partner in the business.~~

~~c. A true copy of the partnership agreement shall be submitted with the application. If the partnership is required to file a certification as to a trade name under the provisions of Minn. Stat. ch. 333, a copy of such certificate, certified by the clerk of district court, shall also be attached.~~

~~(4) If the applicant is a corporation or other organization:~~

~~a. The name, and if incorporated, the state of incorporation.~~

~~b. A true copy of the certificate of incorporation, articles of incorporation or association agreement, and bylaws shall be attached to the application. If a foreign corporation, a certificate of authority, as described in Minn. Stat. ch. 303, shall also be attached.~~

~~c. The name of the manager or proprietor or other agent in charge of the business to be licensed and all information concerning such persons as is required in subsection (2) of this section.~~

~~d. A list of all parties who control or own an interest in excess of five percent in such corporation or organization and all information concerning such person as is required in subsection (2) of this section.~~

~~e. If the applicant is a nonprofit corporation, the application shall include a list of all members of such nonprofit corporation.~~

~~(5) Whether the applicant is licensed in other communities to operate similar businesses; and if so, where.~~

~~(6) The names of applicant's employees to be licensed and working for the applicant in the city.~~

~~(7) Whether the applicant or anyone listed in subsection (4)d of this section, has previously been denied a massage license, or has had a license revoked. If so, give details of each.~~

~~(8) The names, residences, and business addresses of those residents of the metropolitan area, of good moral character, not related to the applicant or financially interested in the premises of business, who may be referred to as the applicant's or manager's character.~~

~~(9) A description and location of the premises to be licensed. If the premises are not constructed and furnished at the time the application is filed, the detailed plans of the premises and furnishings shall be filed with the application.~~

~~(10) A description of the services to be provided.~~

~~(11) A list of types of equipment to be used in the business.~~

~~(12) Such other information as the council may require.~~

~~Sec. 22-454 - Masseur and masseuse license.~~

~~Applications for masseur and masseuse license provided in this article shall be made to the city clerk on such forms as the clerk may from time to time provide. In addition to such information as the clerk may require, the application should also include:~~

~~(1) All of the information required under section 22-453(2), (5), (7), (8) and (10).~~

~~(2) Photographs of the applicant showing the front and side view. The applicant may furnish pictures. If such pictures are not acceptable to~~

~~the police chief, he may reject them and have the pictures taken by the police department.~~

~~Sec. 22-455 – Execution of application.~~

~~All applications for licenses, whether business or masseur or masseuse license, shall be signed and sworn to. If the application is that of a natural person, it shall be signed and sworn to by such person; if by a corporation, by an officer thereof; if by an incorporated association, by the manager, or officer thereof. Any falsification of information on the license application shall result in the denial of the license.~~

~~Sec. 22-456 – Changes in application information.~~

~~It shall be the continuing duty of each licensee to properly notify the city clerk of any change in the information or facts required to be furnished on the application for license and failure to comply with this section shall constitute cause for revocation or suspension of such license.~~

~~Sec. 22-457 – Fees.~~

~~(a) *License fees.* Each application for a license shall be accompanied by a payment in full of the required annual license fee. The fee for a business license shall be \$1,000.00. The fee for a masseur or masseuse license shall be \$10.00. Upon rejection of any application for a license, the city shall refund the amount paid. No other refunds shall be made.~~

~~(b) *Investigation fees.* At the time of each original application for a license there shall be paid in full an investigation fee of \$500.00 for a business and \$350.00 for a masseur or masseuse license. No investigation fee shall be refunded.~~

~~Sec. 22-458 – Review of applications.~~

~~All applications shall be referred to the police chief and such other city departments as the city manager shall deem necessary for verification and investigation of the facts set forth in the application. The police chief and other consultants shall make a written recommendation to the city council as to the issuance or non-issuance of the license. The city council may order and conduct such additional investigation as it deems necessary.~~

~~Upon completion of its investigation, the council shall grant or deny the license.~~

~~Sec. 22-459 – Persons ineligible.~~

~~No license shall be issued to an applicant who is under 18 years of age, is an illegal alien, or has been convicted of prostitution or any other crime or violation involving moral turpitude.~~

~~(Code 1980, § 13-30; Ord. No. 89-1117, 2-16-1989)~~

~~Sec. 22-460 – Restrictions and regulations.~~

~~(a) Licenses may be granted only in the appropriate zoning district to be determined by the city council in accordance with the city zoning ordinance.~~

~~(b) A license for a masseuse or masseur may be denied or rescinded upon any of the following grounds:~~

~~(1) Fraud or deception in the license application.~~

~~(2) The applicant or licensee has a history of violations of laws and ordinances that apply to prostitution, health, safety, or moral turpitude.~~

~~(3) The applicant or licensee is convicted of an ordinance or state statute violation arising within a business establishment within the state to which a sauna and/or massage parlor license was granted.~~

~~(4) The applicant or licensee has been convicted of crimes or offenses involving sexual misconduct as defined in state statutes or local ordinance.~~

~~(5) The applicant or licensee has insufficient training or education in the practice of massage.~~

~~(c) Licenses shall be granted only to establishments which can meet the safety and sanitary requirements of the city and of the building code regulations of the city and state.~~

~~(d) It shall be grounds for revocation or suspension of a license if the owner, manager, lessee, or any of the employees are convicted of any ordinance or state statute violation arising within the business establishment to which a license was granted under this article.~~

~~(e) An application may be denied or a license may be revoked or suspended if the presence of such a sauna and/or massage establishment is found to be detrimental to the health, welfare, or safety of the citizens of the city.~~

~~(f) A license may be revoked or suspended upon evidence of a material variance in the actual plan and design of the premises from the plans submitted.~~

~~(g) It shall be grounds for revocation or suspension of a license granted to any person for business or massage or masseuse purposes under this article if the owner or manager, lessee, or any of the employees are found to be in control or possession of an alcoholic beverage or a narcotic drug or controlled substance on the premises, other than drugs which may be purchased over the counter without prescription or those for which the individual has a prescription.~~

~~(h) Each holder of a business license shall maintain with the police chief a current list of all employees of such licensed premises. The list shall include masseurs and masseuses licensed under this article. Failure to maintain such list shall be grounds for disciplinary action by the city council, including suspension or revocation of the licenses issued under this article.~~

~~(i) A business license, or a masseur or masseuse license granted under this article may be revoked or suspended by the city council for violation of any provision herein, after the licensee has been given reasonable notice and an opportunity to be heard at a public hearing before the city council.~~

Sec. 22-461 – Renewals.

~~An application for a renewal of a business or masseur or masseuse license shall be made in the same manner as the original application. The license fees for a renewal shall be the same as those contained in section 22-457(a).~~

~~Licenses must be renewed annually. If the license holder is a corporation, licenses must also be renewed whenever more than ten percent of the corporation's stock is transferred. If the license holder is a partnership, the license must also be renewed whenever a new partner is added to the partnership.~~

~~Secs. 22-462 – 22-560 – Reserved.~~

CHAPTER 22

LICENSING AND REGULATION OF THERAPEUTIC MASSAGE

DIVISION 1. - GENERALLY

Sec. 22-421. Purpose.

The purpose of this section of the City Code is to prohibit massage businesses and services to the public except those licensed as therapeutic massage enterprises and massage therapists pursuant to this section. The licensing regulations prescribed herein are necessary in order to protect businesses that are operating legitimate enterprises, to prevent criminal activity and to protect the health and welfare of the community. The purpose of this section is not to impose restrictions or limitations on the freedom of protected speech or expression.

Sec. 22-422. Findings of the City Council.

The City Council of the City of Blaine makes the following findings regarding the need to license therapeutic massage enterprises and therapists and to prohibit all other types of massage businesses and services to the public:

(a) Persons who have bona fide and standardized training in therapeutic massage, health, and hygiene can provide a legitimate and necessary service to the general public.

(b) Health and sanitation regulations governing therapeutic massage enterprises and therapists can minimize the risk of the spread of communicable diseases and can promote overall health and sanitation.

(c) License qualifications for the restrictions on therapeutic massage enterprises and therapists can minimize the risk that such businesses and persons will facilitate prostitution and other criminal activity in the community.

(d) Massage services provided by persons with no specialized and standardized training in massage can endanger citizens by facilitating the spread of communicable diseases, by exposing citizens to unhealthy and unsanitary conditions, and by increasing the risk of personal injury.

(e) Massage businesses which employ persons with no specialized and standardized training can tax City law enforcement services because such businesses are more likely to be operated as fronts for prostitution and other criminal activity than operations established by persons with standardized training.

(f) The training of professional massage therapists at accredited institutions is an important means of ensuring the fullest measure of protecting the public health, safety, and welfare.

Sec. 22-423. Definitions.

The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise:

Accredited Institution - an educational institution holding accredited status with the United States Department of Education.

Accredited Program - a professional massage program accredited by the Commission on Massage Therapy Accreditation (COMTA).

Clean - the absence of dirt, grease, rubbish, garbage, and other offensive, unsightly, or extraneous matter.

Good repair - free of corrosion, breaks, cracks, chips, pitting, excessive wear and tear, leaks, obstructions, and similar defects so as to constitute a good and sound condition.

Issuing Authority - the City of Blaine.

Massage - any method of pressure on, or friction against, or the rubbing, stroking, kneading, tapping, pounding, vibrating, stimulating, or rolling of the external parts

of the human body with the hands or with the aid of any mechanical or electrical apparatus, or other appliances or devices, with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment, or other similar preparations.

Massage Therapist - an individual who practices or administers massage to the public who can demonstrate to the Issuing Authority that he or she:

(a) has current insurance coverage of one million dollars (\$1,000,000) for professional liability in the practice of massage;

(b) is affiliated with, employed by, or owns a therapeutic massage enterprise licensed by the City; and

(c) has completed five hundred (500) hours of certified therapeutic massage training with content that includes the subjects of anatomy, physiology, hygiene, ethics, massage theory and research, and massage practice from an accredited program or accredited institution that has been approved by the Issuing Authority. These training hours must be authenticated by a single provider through a certified copy of the transcript of academic record from the school issuing the training, degree or diploma.

Operate - to own, manage, or conduct, or to have control, charge, or custody over.

Person - any individual, firm, association, partnership, corporation, joint venture, or combination of individuals.

Therapeutic Massage Enterprise – an entity which operates a business which hires only licensed therapeutic massage therapists to provide therapeutic massage to the public. The owner/operator of a therapeutic massage enterprise need not be licensed as a therapeutic massage therapist if he or she does not at any time practice or administer massage to the public. A therapeutic massage enterprise may employ other individuals such as cosmetologists and estheticians, and these individuals are not required to have a massage therapist license as long as they are not providing therapeutic massage to the public.

Within the City - includes physical presence as well as telephone referrals such as phone-a-massage operations in which the business premises, although not physically located within the City, serves as a point of assignment of employees who respond to requests for services from within the City.

Sec. 22-424. License required.

Therapeutic Massage Enterprise License. It shall be unlawful for any person or entity to own, operate, engage in, or carry on, within the City, any type of massage services to the public for consideration without first having obtained a therapeutic massage enterprise license from the City pursuant to this section.

Massage Therapist License. It shall be unlawful for any individual to practice, administer, or provide massage services to the public for consideration within the City without first having obtained a massage therapist license from the City pursuant to this section.

Sec. 22-425. Exceptions.

A Therapeutic Massage Enterprise or Therapist License is not required for the following persons and places:

(1) Persons duly licensed by this state to practice medicine, surgery, osteopathy, chiropractic, physical therapy, or podiatry, provided the massage is administered in the regular course of the medical business and not provided as part of a separate and distinct massage business.

(2) Persons duly licensed by this state as beauty culturists or barbers, provided such persons do not hold themselves out as giving massage treatments and provided the massage by beauty culturists is limited to the head, hand, neck, and feet and the massage by barbers is limited to the head and neck.

(3) Persons working solely under the direction and control of a person duly licensed by this state to practice medicine, surgery, osteopathy, chiropractic, physical therapy, or podiatry.

(4) Places duly licensed or operating as a hospital, nursing home, hospice, sanitarium, or group home established for the hospitalization or care of human beings.

(5) Students of an accredited institution who are performing massage services in the course of a clinical component of an accredited program of study, provided that the students are performing the massage services at the location of the accredited institution and provided the students are identified to the public as

students of massage therapy. Students of an accredited institution who are performing massage services at clinics or other facilities located outside of the accredited institution must have at least one hundred fifty (150) hours of certified therapeutic massage training at the accredited institution prior to performing the therapy outside of the institution, must have proof of liability insurance, and must be identified to the public as a student of massage therapy.

DIVISION 2. - LICENSES

Sec. 22-426. License application.

(a) Therapeutic Massage Enterprise License Application. An application for a therapeutic massage enterprise license shall be made on a form supplied by the City Clerk and shall request the following information:

(1) All Applicants. For all applicants:

(A) Whether the applicant is an individual, corporation, partnership, or other form of organization.

(B) The legal description of the premises to be licensed together with a plan of the area showing dimensions, location of buildings, street access, and parking facilities.

(C) The floor number, street number, and rooms where the massage services are to be conducted.

(D) Whether all real estate and personal property taxes that are due and payable for the premises to be licensed have been paid, and if not paid, the years and amounts that are unpaid.

(E) Whenever the application is for premises either planned or under construction or undergoing substantial alteration, the application shall be accompanied by a set of preliminary plans showing the design of the proposed premises to be licensed. If the plans for design are on file with the City's Building and Inspection Department, no plans need be submitted to the Issuing Authority.

(F) The name and street address of the business if it is to be conducted under a designation, name, or style other than the name of the

applicant, and a certified copy of the certificate as required by Minnesota Statutes, Section 333.02.

(G) The amount of the investment that the applicant has in the business, buildings, premises, fixtures, furniture, and equipment, and proof of the source of such investment. The identity of all other persons investing in the business, building, premises, fixture, furniture and equipment, the amount of their investment and proof of the source of such investment.

(H) All applications for licenses, whether enterprise or individual applications, shall be signed and sworn to. If the application is that of a natural person, it shall be signed and sworn to by such person; if by a corporation, by an officer thereof; if by an incorporated association, by the manager or officer thereof; if by a limited liability company (LLC), by a member thereof. Any falsification of information on the license application shall result in the denial of the license.

(I) Such other information as the City Council or Issuing Authority shall require.

(2) **Individuals.** For applicants who are individuals:

(A) The name, place and date of birth, and street residence address of the applicant.

(B) Whether the applicant has ever used or been known by a name other than the applicant's name, and if so, the name or names and information concerning dates and places where used.

(C) Whether the applicant is a citizen of the United States or a resident alien or has the legal authority to work in the United States.

(D) Street addresses at which the applicant has lived during the preceding five (5) years.

(E) The type, name, and location of every business or occupation the applicant has been engaged in during the preceding five (5) years.

(F) Whether the applicant is currently licensed in other communities to perform massage therapy, and if so, where.

(G) Names and addresses of the applicant's employers for the preceding five (5) years.

(H) Whether the applicant has ever been convicted of any felony, crime, or violation of any ordinance other than a minor traffic offense. If so, the applicant shall furnish information as to the time, place and offense for which convictions were had.

(I) Whether the applicant has had an interest in, as an individual or as part of a corporation, partnership, association, enterprise, business or firm, a massage license that was revoked or suspended within the last five (5) years of the date the license application is submitted to the Issuing Authority.

(J) Whether the applicant has ever been engaged in the operation of massage services. If so, applicant shall furnish information as to the name, place and length of time of the involvement in such an establishment.

(3) **Partnerships.** For the applicants that are partnerships: the names and addresses of all general and limited partners and all information concerning each general partner as is required in paragraph (2) of this Section of this Code. The managing partners shall be designated and the interest of each general and limited partner in the business shall be disclosed. A true copy of the partnership agreement shall be submitted with the application, and if the partnership is required to file a certificate as to a trade name under Minnesota Statutes, Section 333.02, a certified copy of such certificate shall be submitted. The license shall be issued in the name of the partnership.

(4) **Corporations and Other Organizations.** For applicants that are corporations or other types of organizations:

(A) The name of the organization, and if incorporated, the state of incorporation.

(B) A true copy of the Certificate of Incorporation, and, if a foreign corporation, a Certificate of Authority as described in Minnesota Statutes, Section 303.02.

(C) The name of the general manager, corporate officers, proprietor, and other person in charge of the premises to be licensed, and all the information about said persons as is required in paragraph (2) of this Section of this Code.

(D) A list of all persons who own or control an interest in the corporation or organization or who are officers of said corporation or organization, together with their addresses and all the information regarding such persons as is required in paragraph (2) of this Section of this Code.

(b) Massage Therapist License Application. An application for a massage therapist license shall be made on a form supplied by the City Clerk and shall request the following information:

(1) The applicant's name and current address.

(2) The applicant's current employer.

(3) The applicant's employers for the previous five (5) years, including the employer's name, address and dates of employment.

(4) The applicant's addresses for the previous five (5) years.

(5) The applicant's date of birth, home telephone number, weight, height, color of eyes, and color of hair. A color photocopy of the applicant's MN driver's license or MN I.D. front and back, or any other government issued I.D. If the photocopy is not acceptable to the Police Chief, the Police Department may take photographs for the file.

(6) Whether the applicant has ever been convicted of any felony, crime, or violation of any ordinance other than a minor traffic offense and, if so, the time, place, and offense for which convictions were had.

(7) Whether the applicant has had an interest in, as an individual or as part of a corporation, partnership, association, enterprise, business or firm, a massage license that was revoked or suspended within the last five (5) years of the date the license application is submitted to the Issuing Authority.

(8) The names, resident and business addresses of those residents of the metropolitan area, of good moral character, not related to the applicant or

financially interested in the premises of the business, who may be referred to as the applicant's character.

(9) Whether the applicant is a U.S. citizen or resident alien or has the legal authority to work in the United States.

(10) Whether the applicant has ever used or been known by a name other than the applicant's name, and if so, the name or names and information concerning dates and places where used.

(11) Whether the applicant has met the definition of a massage therapist in Section 22-423 of this Code.

(12) Such other information as the City Council or Issuing Authority shall require.

Sec. 22-427. License fees.

The fees for a therapeutic massage enterprise and therapist licenses shall be as set forth in Appendix D of this Code. An investigation fee shall be charged for therapeutic massage enterprise licenses and an individual therapeutic massage license. Each application for a license shall be accompanied by payment in full of the required license and investigation fees. No investigation fee shall be refunded.

Beginning in 2012, the first year of massage therapy licensing, license fees for new enterprises and individuals shall be pro-rated to one-half (1/2) the annual fee. Licenses approved for 2012 will be effective July 1 through December 31, 2012. Thereafter the full license fee will be charged on an annual basis regardless of when the application is received. Background investigation fees will not be pro-rated for a new application.

Sec. 22-428. License application verification and consideration.

(a) Therapeutic Massage Enterprise License.

(1) All applications shall be referred to the Chief of Police, or his or her designee, and such other city departments as the city manager shall deem necessary for verification and investigation of the facts set forth in the application. The Chief of Police, or his or her designee, is empowered to conduct any and all investigations to verify the information on the application, including ordering a

computerized criminal history inquiry and/or a driver's license history inquiry on the applicant. The Chief of Police, or his or her designee, is authorized to access data maintained in the Minnesota Bureau of Criminal Apprehensions Computerized Criminal History information system in accordance with BCA policy. The Chief of Police, or his or her designee, and other consultants shall make a written recommendation to the city council as to the issuance or non-issuance of the license. The city council may order and conduct such additional investigation as it deems necessary. Upon completion of its investigation, the council shall grant or deny the license.

(b) Massage Therapist License.

(1) Verification and Consideration. Within a reasonable period after receipt of a complete application and applicable fees for a massage therapist license, the Issuing Authority shall make recommendation to grant or deny the application. The Issuing Authority is empowered to conduct any and all investigations to verify the information on the application, including ordering a computerized criminal history inquiry, background check, and/or a driver's license history inquiry on the applicant. Notice shall be sent by the City Clerk by regular mail to the applicant upon a denial informing the applicant of the right to appeal to the City Council within twenty (20) days. If an appeal is properly made, the matter shall be placed on the next available City Council agenda.

(2) Photo I.D. Cards. Photo identification cards shall be issued to individuals receiving a therapeutic massage therapist license.

Sec. 22-429. Persons ineligible for license.

(a) Therapeutic Massage Enterprise License. No therapeutic massage enterprise license shall be issued to an individual or entity which:

(1) Is not eighteen (18) years of age or older at the time the application is submitted to the Issuing Authority;

(2) Has been convicted of any crime directly related to the occupation licensed as prescribed by Minnesota Statutes, Section 364.03, subdivision 2, and who has not shown competent evidence of sufficient rehabilitation and present fitness to perform the duties and responsibilities of a licensee as prescribed by Minnesota Statutes, Section 364.03, subdivision 3;

(3) Has had an interest in, as an individual or as part of a corporation, partnership, association, enterprise, business or firm, a massage license that was revoked or suspended within the last five (5) years of the date the license application is submitted to the Issuing Authority.

(4) Is not a citizen of the United States or a resident alien, or is legally prohibited from working in the United States;

(5) Is not of good moral character or repute;

(6) Is not the real party in interest of the enterprise;

(7) Has knowingly misrepresented or falsified information on the license application;

(8) Cannot meet the definition of therapeutic massage enterprise in Sec. 22-423 of this Code; or

(9) Owes taxes or assessments to the State, County, School District, or City that are due and delinquent.

(10) Is the spouse of a person whose massage-related license has been suspended or revoked in the past five (5) years.

(b) **Massage Therapist License.** No massage therapist license shall be issued to a person who:

(1) Is not eighteen (18) years of age or older at the time the application is submitted to the Issuing Authority;

(2) Has been convicted of any crime directly related to the occupation licensed as prescribed by Minnesota Statutes, Section 364.03, subdivision 2, and who has not shown competent evidence of sufficient rehabilitation and present fitness to perform the duties and responsibilities of a licensee as prescribed by Minnesota Statutes, Section 364.03, subdivision 3;

(3) Whether the applicant has had an interest in, individually or as part of a corporation, partnership, association, enterprise, business or firm, a massage license that was revoked or suspended within the last five (5) years of the date the license application is submitted to the Issuing Authority.

(4) Is not a citizen of the United States or a resident alien, or is legally prohibited from working in the United States;

(5) Is not of good moral character or repute;

(6) Has knowingly misrepresented or falsified information on the license application;

(7) Is not affiliated with, employed by, or does not own a therapeutic massage enterprise licensed by the City; or

(8) Cannot meet the definition of massage therapist in Sec. 22-423 of this Code.

Sec. 22-430. Locations ineligible for therapeutic massage enterprise license.

(a) **Delinquent Taxes.** No therapeutic massage enterprise shall be licensed if such enterprise is located on property on which taxes, assessments, or other financial claims to the State, County, School District, or City are due and delinquent. In the event a suit has been commenced under Minnesota Statutes, Sections 278.01 - 278.13, questioning the amount or validity of taxes, the City Council may on application waive strict compliance with this provision; no waiver may be granted, however, for taxes or any portion thereof, which remain unpaid for a period exceeding one (1) year after becoming due.

(b) **Improper Zoning.** No therapeutic massage enterprise shall be licensed if the location of such enterprise is not in conformance with the City's Zoning Code.

Sec. 22-431. License restrictions.

(a) **Posting of License.** A therapeutic massage enterprise license issued must be posted in a conspicuous place on the premises for which it is used. A person licensed as a massage therapist shall also post their massage therapist license, with color photo, in a conspicuous place on the premises at which the therapist is associated. A person licensed as a massage therapist shall have readily available at all times that therapeutic massage services are rendered, the photo identification card issued by the Issuing Authority. The photo identification card issued by the Issuing Authority must be presented to each client when providing massage off-site.

(b) Licensed Premises. A therapeutic massage enterprise license is only effective for the compact and contiguous space specified in the approved license application. If the licensed premises is enlarged, altered, or extended, the licensee shall inform the City Clerk within ten (10) business days. A massage therapist license shall entitle the licensed therapist to perform on-site massage at a business, public gathering, private home, or other site not on the therapeutic massage enterprise premises. It shall be the continuing duty of each licensee to properly notify the City Clerk, within ten (10) business days, of any change in the information or facts required to be furnished on the application for license and failure to comply with this section shall constitute cause for revocation or suspension of such license.

(c) Transfer of License Prohibited. The license issued is for the person or the premises named on the approved license application. No transfer of a license shall be permitted from place to place or from person to person without complying with the requirements of an original application.

(d) Affiliation With Enterprise Required. A massage therapist shall be employed by, affiliated with, or own a massage enterprise business licensed by the City, unless a person or place is specifically exempted from obtaining a therapeutic massage enterprise license in Sec. 22-425 of this Code.

(e) Employment of Unlicensed Massage Therapists Prohibited. No therapeutic massage enterprise shall employ or use any person to perform massage who is not licensed as a therapeutic massage therapist under this section, unless the person is specifically exempted from obtaining a therapist license in Section 22-425 of this Code.

(f) Coverage of Genitals During Massage. The licensee shall require that the person who is receiving the massage shall at all times have his or her genitals covered with non-transparent material or clothing.

(g) Therapist Dress/Uniform Requirements. Any therapist performing massage shall at all times be dressed professionally, including short sleeved shirts, skirts no shorter than three (3) inches above the knees, no cleavage showing, nails trimmed and neat, hair pulled back and closed-toed shoes.

(h) Effect of License Suspension or Revocation. No licensee shall solicit business or offer to perform massage services while under license suspension or revocation by the City.

(i) Massage of Certain Body Parts Prohibited. At no time shall the massage therapist intentionally massage or offer to massage the penis, scrotum, mons veneris, vulva, or vaginal area of a person.

(j) Restrictions Regarding Hours of Operation. No therapeutic massage enterprise shall be open for business, nor will any therapeutic massage therapist offer massage services, before 8:00 a.m. or after 10:00 p.m. any day of the week. No customers or patrons shall be allowed to remain upon the licensed premises after 10:30 p.m. and before 8:00 a.m. daily. Support activities such as cleaning, maintenance and bookkeeping are allowed outside of business hours.

(k) Proof of Local Residency Required. In the case of a therapeutic massage enterprise, the licensee, managing partner, or manager of the licensed premise must show proof of residency in one of the following counties: Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington and Wright in Minnesota, and St. Croix or Pierce in Wisconsin. In the case of therapeutic massage therapists, the licensee must show proof of residing in one of the following counties: Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington and Wright in Minnesota, and St. Croix or Pierce in Wisconsin.

(l) Inspections. In light of the high risk of involvement with illegal conduct an establishment providing massage therapy poses to the general public, the Issuing Authority, Environmental Health Department or designee, and/or the City Police Department shall have the right to enter, inspect, and search the licensed premises during the hours in which the licensed premises is open for business to ensure compliance with all provisions of this section. Any search of the licensed premises are subject to reasonableness standards as recognized by the Courts; search warrants will be secured when applicable. Any entry into a private residence will require either consent, exigent circumstances, or a search warrant. With reasonable notice, the business records of the licensee, including income tax returns, shall be available for inspection during the hours in which the licensed premises is open for business. The licensee is subject to a \$250 fee for a third inspection, if orders to correct are issued to the licensee and those orders are not corrected upon re-inspection. Licenses shall be granted only to establishments

which can meet the safety and sanitary requirements of the city and of the building code regulations of the city and state.

(m) **Posting of Rates.** All massage enterprise businesses must post their rates for service in a prominent place in the entrance or lobby of the business.

(n) **Illegal Activities.** In addition to the license restrictions set forth in this section, any advertising by a licensee of any potential unlawful or erotic conduct at the licensed establishment shall be prohibited. A licensee under this chapter shall be strictly responsible for the conduct of the business being operated in compliance with all applicable laws and ordinances, including the actions of any employee or agent of the licensee on the licensed premises.

(o) **Restrictions involving Minors.** No person under the age of 18 shall be permitted at any time to be in or on the licensed premises as a customer, guest, or employee, unless accompanied by his/her parent or guardian.

Sec. 22-432. Restrictions regarding sanitation, health and safety.

(a) **Toilet Room Requirements.** A licensed therapeutic massage enterprise shall be equipped with adequate and conveniently located toilet rooms for the accommodation of its employees and patrons. The toilet room shall be well ventilated by natural or mechanical methods and be enclosed with a door. The toilet room shall be kept clean and in good repair and shall be adequately lighted.

(b) **Paper/Linen Requirements.** A licensed therapeutic massage enterprise shall provide single-service disposal paper or clean linens to cover the table, chair, furniture, or area on which the patron receives the massage; or in the alternative, if the table, chair, or furniture on which the patron receives the massage is made of material impervious to moisture, such table, chair, or furniture shall be properly sanitized after each massage.

(c) **Washing of Hands Required.** The massage therapist shall wash his or her hands and arms with water and soap, anti-bacterial scrubs, alcohol, or other disinfectants prior to and following each massage service performed.

(d) **Door Latches and Locks.** Doors on massage therapy rooms shall not be locked or capable of being locked. Locks, latches or other devices intended to secure a door so as to prevent it from being opened by any person from either side

of the door with or without a key cannot be present on any doors of rooms intended for massage therapy.

Sec. 22-433. Term, renewal of license.

(a) The term of a massage therapist license and a therapeutic massage enterprise license is one (1) year. If an individual or enterprise submits an application any time during a calendar year, the term shall expire December 31 of the year of issuance. The license fee for a partial calendar year may be pro-rated to one-half (1/2) of the annual fee if an application is filed with the Issuing Authority after June 30

(b) Licenses must be renewed annually. A massage therapist license issued under this section shall expire on December 31 of the year of issuance of the license. A therapeutic massage enterprise license issued under this section shall expire on December 31 of the year of issuance. An application for the renewal of an existing license shall be made at least seventy-five (75) days prior to the expiration date of the license and shall be made in such form as the Issuing Authority requires.

(c) An application for a renewal of an enterprise or individual license shall be made in the same manner as the original application. The license and investigation fees for a renewal shall be the same as those contained in Sec. 22-427. If the license holder is a corporation, licenses must also be renewed within thirty (30) days whenever more than ten percent of the corporation's stock is transferred. If the license holder is a partnership, the license must also be renewed within thirty (30) days whenever a new partner is added to the partnership. If the license holder is an LLC, the license must be renewed within thirty (30) days whenever a change in membership or chief manager occurs.

(d) After the completion of the renewal license verification process, the Issuing Authority shall present the license application to the City Council in accordance with this section. If the application is denied, the City Clerk shall notify the applicant of the determination in writing and by regular mail to the address provided on the application form. The notice shall inform the applicant of the right, within twenty (20) days after receipt of the notice by the applicant, to request an appeal of the denial to the City Council. If an appeal to the City Council is timely received by the City Clerk, the hearing before the City Council shall take place within a reasonable period of receipt of the appeal by the Issuing Authority.

Sec. 22-434. Sanctions for license violations.

(a) Suspension or Revocation. The City Council may impose an administrative penalty, suspend or revoke a license issued pursuant to this section, at its discretion, for:

(1) A violation related to fraud, misrepresentation, or false statement contained in a license application or a renewal application.

(2) A violation related to fraud, misrepresentation, or false statement made in the course of carrying on the licensed occupation or business.

(3) Any violation of this section or state law.

(4) A violation by any licensee or individual that is directly related to the occupation or business licensed as defined by Minnesota Statutes, Section 364.03, subdivision 2.

(5) Conducting the licensed business or occupation in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the community.

(6) If the owner, manager, lessee or any of the employees are found to be in control or possession of an alcoholic beverage, a narcotic drug or controlled substance on the premises, other than drugs which may be purchased over the counter without a prescription or those for which the individual has a prescription.

(7) If the holder of an enterprise license fails to maintain with the Issuing Authority a current list of all employees of such licensed premises. The list shall include all massage therapists licensed under this section.

(8) A material variance in the actual plan and design of the premises from the plans submitted.

(9) Neither the charging of a criminal violation nor a criminal conviction is required in order for the Council to impose an administrative penalty or suspend or revoke a license.

(b) Notice and Hearing. A revocation or suspension by the City Council shall be preceded by written notice to the licensee and a hearing. The notice shall give

at least ten (10) days' notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice shall be mailed by regular mail to the licensee at the most recent address listed on the license application.

Sec. 22-435 – 22-450 - Reserved

Sec. 22-451. Violations and penalties.

Any person or entity violating the provisions of this section is guilty of a misdemeanor under Minnesota law, and shall be punished by a fine or by imprisonment, or both, together with the costs of prosecution. Each violation of this section shall constitute a separate offense. Conviction of a violation of this section, while not required, may be grounds for the suspension or revocation of any license issued under this section.

Sec. 22-452. Severability.

If any section, subsection, sentence, clause, or phrase of this section is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this section. The City Council hereby declares that it would have adopted the section in each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Sec. 22-453 – 460. Reserved

INTRODUCED AND READ in full the 1st day of March 2012.

PASSED by the City Council of the City of Blaine this 5th day of April, 2012.

Tom Ryan, Mayor

ATTEST:

Jane M. Cross, CMC, City Clerk

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