



Legislation Text

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ORDINANCE REPEALING ARTICLE VI OF CHAPTER 5 OF THE DULUTH CITY CODE, ADOPTING A NEW CHAPTER 14, ARTICLE I, AND NAMING CHAPTER 14 "COMPLEMENTARY AND ALTERNATIVE HEALTHCARE PRACTICES."

BY COUNCILOR ANDERSON:

The city of Duluth does ordain:

Section 1. That Article VI of Chapter 5 of the Duluth City Code be repealed.

Section 2. That a new Chapter 14, Article I, be adopted to read as follows:

Chapter 14

COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTICES

Article I. Massage Establishments.

Sec. 14.1. Definitions.

(a) Accredited institution means an educational institution holding accredited status approved by the United States Department of Education or Minnesota Office of Higher Education.

(b) Accredited program means a professional massage program or educational institution accredited by the Commission on Massage Therapy Accreditation (COMTA).

(c) Massage. As used in this Article, the term means scientific manipulation of the soft tissue of the body of one person, with the hands or feet of another person or with or without the aid of any mechanical or electrical apparatus or other device with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, liniment, or other similar preparations, for the purpose of relaxation or therapy, but excluding athletic directors and trainers employed by a school or bona fide athletic team, beauty culturists, barbers or by practitioners of traditional healing or martial arts.

(d) Massage establishment. The term means any business establishment having a fixed place of business where any person engages in, or permits another person to be engaged in, the massage of clients, including but not limited to health clubs, beauty salons, saunas and steam baths that offer massage therapy, but excluding residential premises where massage therapy is practiced as a home occupation under the terms of Chapter 50 of this Code and further excluding the premises of medical professionals falling within the purview of Minnesota Statutes Section 471.709.

(e) Person means any individual, firm, association, partnership, corporation, joint venture, or combination of individuals.

Sec. 14.2. License required.

No person shall engage in the business of operating a massage establishment either exclusively or in connection with any other business enterprise without first obtaining a license for each massage establishment.

Sec. 14.3. Massage establishments; Licenses required.

Application for a massage establishment license shall be made to the city clerk on forms supplied by the clerk and shall request the following information:

(a) A description of services to be provided;

(b) A description and location of the premises to be licensed;

(c) The full names and addresses of the property owner, business owner, lessee and manager, operator and the date of birth of each; and for the business owner, operator and manager, all of information required under Subdivision (d) of Section 14-5 herein;

(d) If applicant is a corporation, the names and residence addresses of each of the officers and

directors of said corporation and of each stockholder owning more than ten percent of the stock of the corporation, and the address of the corporation itself, if different from the address of the massage establishment; and for each such officer, director or stockholder, all of the information required under Subdivision (d) Section 14-5 herein;

(e) If applicant is a partnership, the names and residence addresses of each of the partners including limited partners, and for each such partner, all of the information required under Subdivision (d) of Section 14-5 herein and the address of the partnership itself, if different from the address of the massage establishment;

(f) Whether any of the aforementioned individuals have ever been convicted of any crime or offense other than a traffic offense, and if so, a description of the offense as to time, place, date and disposition;

(g) Whether any of the aforementioned individuals has ever held a license to run a massage establishment or similar business in another jurisdiction, and, if so, whether such license was ever revoked, suspended or denied;

(h) The method of payment under which massage therapists are paid, the economic basis upon which massage therapists are paid, and the full legal name, date of birth and address of each massage therapist providing massage at the applicant's massage establishment; and

(i) Whether any of the individuals identified in this Section have been disciplined by the state of Minnesota pursuant to Minnesota Statutes Chapter 146A, or its successor or similar laws of any other jurisdiction.

Sec. 14.4. License fee and license year; separate license required for each place of business; display of license.

The annual license fee shall be set in accordance with Section 31-6(a) of this Code. A separate license shall be obtained for each place of business. The licensee shall display the license in a prominent place on the licensed premises at all times. A license, unless revoked, is for the May 1 to April 30 year, or part thereof, for which it has been issued.

Sec. 14.5. Massage therapists; licenses required.

(a) No massage establishment licensee shall permit any person to perform a massage in the licensee's massage establishment unless such person is licensed as a massage therapist as provided herein. No person shall massage another for compensation unless such person has obtained a massage therapist license as provided herein;

(b) Massage therapist licenses shall be issued by the city clerk after approval by the chief of police. Applicant must be 18 years of age or over, of good moral character and eligible for a license under the terms of Minnesota Statutes Chapter 364 and the provisions of this Article.

(c) Applicants shall have successfully completed 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, accredited institution, or a program or institution licensed or verified by a state licensing board or agency 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. In the event the accredited program or accredited institution is no longer in existence, in the sole discretion of the city, a certified copy of the transcript of academic record may be accepted directly from the applicant with an affidavit stating said transcript of academic record is authentic. The transcript of academic record must be from a program or institution that was once accredited and approved by the issuing authority. The certified copy of the transcript of academic record must contain the applicant's name, last address of the accredited institution at the time of closing, and reflect the 500 hours of certified therapeutic massage training with content that includes the subject of anatomy, physiology, hygiene, ethics, massage theory and research, and massage practice as required. Notwithstanding the above, any person licensed as a massage therapist before July 15, 2001, may continue to receive a license despite the fact such therapist has less than 500 hours of training;

(d) All applications for such license shall be signed and sworn to and filed with the city clerk. The application shall state:

(1) The applicant's full legal name and whether the applicant has ever used or been known

by any other name, and if so, the name or names and information concerning dates and places where used.

(2) The applicant's date of birth, home telephone number, and full street addresses and dates at which the applicant has lived during the preceding ten years. A color photocopy of the front and back of the applicant's Minnesota driver's license, Minnesota I.D. or any other government-issued photo identification.

(3) The type, name, location, and dates of every business or occupation the applicant has been engaged in during the preceding ten years.

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

(5) 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.

(6) Whether the applicant has ever been arrested, charged or 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 date, time, place and offense for which arrests, charges or convictions were had.

(7) Whether the applicant has ever 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 ten years of the date the license application is submitted to the issuing authority.

(8) The full name and address of each massage establishment located in the city at which the applicant will perform massage.

(9) Whether the applicant has ever been the subject of an investigation, public or private, criminal or non-criminal, regarding massage therapy.

(10) Such other relevant information as the chief of police shall require.

(e) The fee for such license shall be set in accordance with Section 31-6(a) of this Code. The license year shall be from May 1 to April 30 and shall not be prorated.

Sec. 14.6. Issuance; transfer of a license

(a) All applications for license under this Article shall be referred to the chief of police or designee who shall 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 designee is authorized to access data maintained in the Minnesota Bureau of Criminal Apprehensions (BCA) Computerized Criminal History information system in accordance with BCA policy. The chief of police or designee may order and conduct such additional investigations as it deems necessary, including but not limited to, contacting other agencies. In addition, all applications must include results of a comprehensive national criminal background check from a background investigative provider approved by the city. The national criminal background check is to be obtained and paid for by the applicant. No license under this Article shall be issued unless it is approved by the chief administrative officer upon advice from the police department. If the application is for a massage establishment license, no license shall be issued and unless the establishment has passed fire and health inspections. Additionally, the chief administrative officer shall not approve any license if he has reasonable grounds to believe:

(1) That the granting of said license would result in violations of the law;

(2) That the license application contains false or misleading statements; or

(3) That other good cause exists for denying the license.

(b) If the chief of police or chief administrative officer finds that they do not have adequate information to evaluate a license application, they may direct the applicant, manager or agent to appear at any reasonable time and place to give under oath information concerning the application. No license shall be granted to any applicant who refuses to appear and cooperate with the investigation.

(c) No massage therapist license issued under the provisions of this Article shall be assigned or transferred by the licensee.

(d) No transfer of a massage establishment license shall be permitted without complying with the requirements of an original application. Within 30 days of any change in the ownership or change in managers or officers of a licensed massage establishment, the license holder shall provide written notice of such change to the city clerk on the form required by the city. The form shall be accompanied by a fee which shall be set in accordance with Section 31-6(a) of this Code. The city clerk shall promptly refer the matter to

the chief of police or designee who shall conduct the investigation per subparagraph (a) above. No license shall be transferred unless it is approved by the chief administrative officer upon advice from the police department and unless the establishment has passed fire and health inspections. The failure of any license holder to comply with the provisions of this paragraph shall be grounds for the revocation of all licenses held by such license holder.

Sec. 14.7. Prohibited acts.

(a) No massage establishment shall:

- (1) Remain open between 11:00 p.m. and 6:00 a.m. on any day;
- (2) Hire or contract with as a massage therapist any person who is not licensed pursuant to this Article;
- (3) Allow any alcoholic beverages to be kept, sold, dispensed or consumed on the premises;
- (4) Permit massages to be given in any cubicle, room or booth with a locking door;
- (5) Violate Sections 34-19, 34-20, 34-21 or 34-22 of the Duluth City Code or any provision of Minnesota Statutes Chapter 146A, or its successor.

of Minnesota Statutes Chapter 146A, or its successor.

(b) No massage therapist shall:

- (1) Massage or offer to massage the genital area of any customer;
- (2) Perform or offer to perform any act prohibited by Section 34-18 of the Duluth City Code;
- (3) Violate any provision of Minnesota Statutes Chapter 146A, or its successor.

Sec. 14-8. Massage therapists not to live on licensed premises.

(a) No massage therapist shall maintain his or her living quarters on the licensed premises of any massage establishment;

(b) No license shall be granted to any massage therapist who does not maintain separate living quarters away from the rooms where massages are performed, unless the massage therapist is lawfully engaging in a massage practice as a home occupation under the terms of Chapter 50 of this Code.

Sec. 14.9. Licensee to maintain order on premises.

The licensee, or, in the case of a corporate licensee, the manager of any massage establishment shall personally supervise the business operations and shall have a non-delegable duty to insure that no acts of prostitution, sexual misconduct or other violations of this Article occur on the licensed premises. To this end, every act done in violation of this Article on the licensed premises by an employee, massage therapist, manager or agent of the licensee shall also be deemed to be an act of the licensee.

Sec. 14.10. Suspension and revocation of licenses.

The chief administrative officer may revoke or suspend any license issued pursuant to this Article if, after giving the licensee an opportunity to be heard on the matter, such officer finds:

- (a) The licensee has violated a provision of this Article or any other law relating to the conduct of its operation including, but not limited to, state, federal or local laws on morals, prostitution, health, fire safety or liquor; or
- (b) The licensee secured the license through misrepresentation or fraud or misstated any material fact in the application; or
- (c) Failure of the licensee to cooperate with police, fire or health officers in any investigation relating to their operations or failure to admit police officers into the establishment at any time when people are present in the establishment; or
- (d) The establishment is operated in such a way as to endanger public health or safety; or
- (e) The establishment is operated in such a way as to constitute a public nuisance. Sec. 14.11.

Appeals.

Any person aggrieved by a licensing decision of the chief administrative officer under this Article may appeal such decision to the city council by filing written notice of appeal with the city clerk within 15 days after such decision is rendered.

Section 3. That this ordinance shall take effect 30 days after its passage and publication.

STATEMENT OF PURPOSE: The purpose of this ordinance is to create a new Chapter 14 entitled "COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTICES" in the City Code and to move the

regulation of massage establishments and therapist to Article I of Chapter 14.