

1127. Massage Therapists/Massage Therapy Businesses

§1127.010 FINDINGS AND PURPOSE. The purpose of this chapter is to protect the public health, safety and welfare by regulating massage businesses and massage practitioners. (Ref. Ord. No. 2033, 2/26/19)

§1127.020 DEFINITIONS. The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this chapter, except where the context clearly indicates a different meaning:

1. Massage Therapist. Any person who practices or administers any massage services for a fee. (Ref. Ord. No. 2033, 2/26/19)
2. Massage Services. Any method of applying pressure on, or friction against, or rubbing, stroking, kneading, tapping or rolling of the external parts of the human body with the hands or with the aid of any mechanical or electrical apparatus, appliance or device with or without such supplemental aids as rubbing (isopropyl) alcohol, liniment, antiseptic oil, powder, cream, lotion, ointment or other similar preparation. This term shall not include, and is distinct from, the practice of medicine, surgery, osteopathy, chiropractic, physical therapy, or podiatry. This term includes, but is not limited to, manual therapies such as massage therapy, Asian bodywork therapies, and movement therapies. While these are recognized as separate disciplines, all are considered massage services and are subject to the requirements of this chapter. (Ref. Ord. No. 2033, 2/26/19)
3. Massage Therapist Business. A place of business where massage services are provided to the public for a fee. This term includes businesses which rent/lease space to an independent licensed massage therapist. (Ref. Ord. No. 2033, 2/26/19)

§1127.030 LICENSES REQUIRED.

1. No person shall perform as a massage therapist without having first secured a license as provided for in this chapter.
2. No person, firm or corporation shall operate a massage therapist business without having first secured a license as provided for in this chapter. (Ref. Ord. No. 2033, 2/26/19)

§1127.040 EXCEPTIONS. Persons duly licensed or registered to practice medicine, surgery, osteopathy, chiropractic, dentistry, physical therapy or podiatry, registered nurses and nurses who work under the direction of such persons, are hereby expressly excluded from the requirements of this chapter, provided the massage and bodywork is administered in the regular course of a prescribed or authorized medical treatment and not provided as part of a separate and distinct massage therapist business, shall be exempt from obtaining a license under this chapter.

§1127.050 LICENSE REQUIREMENTS.

Subd. 1. Fee. There shall be an initial application background check fee in addition to the annual license fee as established by the City Council in its fee schedule. No license shall be issued or renewed unless all fees associated with the requested license have been paid in full. (Ref. Ord. No. 2033, 2/26/19)

Subd. 2. Expiration. Licenses under this chapter shall expire on March 31st of each year, after which the licensee may apply for a renewal through the City's established business license renewal process. (Ref. Ord. No. 2033, 2/26/19)

Subd. 3. Transfer. Licenses are not transferable to another person. A licensed massage therapist may work at another licensed massage therapist business, or transfer from one licensed massage therapist business to another licensed business, provided the licensee provides advance notice to the City's licensing agent. (Ref. Ord. No. 2033, 2/26/19)

Subd. 4. Massage Therapists. All persons providing massage services must have proof of professional liability insurance with coverage of up to \$1,000,000 per occurrence, and at least one of the following:

- A. Certification from National Certification Board for Therapeutic Massage and Bodywork;
- B. Membership with the one of the following accredited professional associations:
 - a. American Massage Therapy Association;
 - b. Associated Bodywork and Massage Professionals;
- C. A certificate of graduation from an educational institution which is either registered with the MN Higher Education Office or accredited by a federally recognized accrediting agency. (Ref. Ord. No. 2033, 2/26/19)

Subd. 5. Massage Therapist Business. An applicant for a massage therapist business must show proof of each of the following:

- A. Applicant has superior possessory interest in the premises at the location approved to be licensed;
- B. All massage therapists at licensed location are duly licensed by the City; and
- C. Proof of workers' compensation insurance as required by Minnesota Law. (Ref. Ord. No. 2033, 2/26/19)

Subd. 6. Application. The initial application for a license shall be made only upon forms furnished by the City of White Bear Lake licensing agent and when completed by the applicant, shall be filed with the licensing agent, and a record of the same made therein. (Ref. Ord. No. 2033, 2/26/19)

Subd. 7. Application Review. Such application shall be reviewed by such departments of the City as shall be deemed necessary by the City Manager. A criminal and

financial background check will be performed by the Police Department. (Ref. Ord. No. 2033, 2/26/19)

Subd. 8. Issuance of Business Licenses. The City Manager shall report to the City Council on the eligibility of an applicant for a massage therapist business license. The City Council shall determine eligibility and act on whether to issue the requested massage therapist business license. If the City Council denies the application, such decision is final and is not subject to appeal within the City.

Subd. 9. Issuance of Therapist Licenses. The City Manager, or the City Manager's designee, is authorized to determine eligibility of an application and to act administratively on whether to issue the requested massage therapist license. If the City Manager or designee denies the application, such decision is subject to appeal to the City Council as provided in Section 1127.115, subdivision 4.

Subd. 10. Letter of Employability. A person seeking employment as a massage therapist, but who is not currently employed at a licensed massage business, may request a background check from the City to confirm the person's eligibility to receive a massage therapist license. The person shall submit an application to the City for the background check together with the required fee. If the person passes the background check, the City Manager or designee will issue the person a letter of employability, which shall be valid through March 31st. A letter of employability does not authorize the person to perform services as a massage therapist. If the person becomes employed at a licensed massage therapist business, the person shall not provide any massage services until the person obtains a massage therapist license by submitting payment for the license to the City. Upon the receipt of such payment, the City Manager or designee shall issue the person a massage therapist license. (Ref. Ord. No. 2033, 2/26/19)

§1127.060 LOCATION. No massage therapy business shall be located or operated in any location not authorized by the City's Zoning Code or within or as an adjunct to any adult entertainment establishment or center or any establishment licensed or required to be licensed for the sale of any form of beverage alcohol, unless the beverage alcohol establishment is located within a hotel or fitness club.

§1127.070 BUSINESS HOURS. No customer or patron shall be allowed to enter the licensed premises after 10:00 p.m. and before 6:00 a.m. daily. No customer or patron shall be allowed to remain upon the licensed premises after 10:30 p.m. and before 6:00 a.m. daily.

§1127.076 LIST OF SERVICES. The operator of the massage therapist business, or responsible employee, shall post or provide to the client a list of services available and the cost of each. No massage therapist shall offer or perform any massage services other than those posted or listed. (Ref. Ord. No. 2033, 2/26/19)

§1127.080 INSPECTION BY CITY OFFICIALS AND IDENTIFICATION OF EMPLOYEES. During any hours in which any person is present on the licensed premises, all massage therapist businesses shall be open to inspection by fire, zoning, building inspectors, police officers and any other appropriate city official. Additionally, during the inspection the massage therapist business and massage therapist shall provide the information required in this section. (Ref. Ord. No. 2033, 2/26/19)

Subd. 1. Upon demand by any city official, any person engaged in providing massage services in shall identify himself/herself giving his/her true legal name and his/her correct address. (Ref. Ord. No. 2033, 2/26/19)

Subd. 2. Employment records, including copies of documents used to determine that the minimum standards for each massage therapist are met as set forth in Section 1127.050, Subd. 4, and that each employee employed by the massage therapist business is (18) eighteen years of age or older, shall be kept by the massage therapist business at the licensed premises and made available for immediate review upon request of a city official. (Ref. Ord. No. 2033, 2/26/19)

Subd. 3. Provide a copy of the massage therapist license issued under this chapter for each massage therapist on the licensed premises of the massage therapy business for immediate review upon request of a city official. (Ref. Ord. No. 2033, 2/26/19)

§1127.090 VIOLATIONS AND PENALTIES. Every person violating any provision of this chapter is guilty of a misdemeanor and upon conviction shall be punished not more than the maximum penalty for a misdemeanor as prescribed by Minnesota state law. Additionally,

Any violation of this chapter shall be a basis for an adverse license action regarding any license granted hereunder. Adverse license actions shall be taken in accordance with Section 1127.115. (Ref. Ord. No. 2033, 2/26/19)

§1127.100 UNLAWFUL ACTS. It shall be unlawful for:

Subd. 1. Any person to engage in or conduct massage therapy without a valid license issued pursuant to this chapter.

Subd. 2. Any person practicing as a massage therapist to place his or her hands upon, or to touch with any part of his or her body, or to fondle in any manner, the genital area of any other person, or breasts of any female person, whether or not the area is clothed. (Ref. Ord. No. 2033, 2/26/19)

Subd. 3. Any person practicing as a massage therapist to expose her female breasts, his or her genital area or any portion thereof to any other person, or to expose the genital area or any portion thereof of any other person. (Ref. Ord. No. 2033, 2/26/19)

Subd. 4. Any person, while in the presence of any other person practicing as a massage therapist, to fail to conceal with a fully opaque covering the genital area of his or her body or her female breasts. (Ref. Ord. No. 2033, 2/26/19)

Subd. 5. Any person to depict, place, publish, distribute or cause to be depicted, placed, published or distributed any advertising matter that suggests to prospective clients that any services are available by a licensee that would constitute a violation of federal, state or local laws, or a violation of this Chapter. (Ref. Ord. No. 2033, 2/26/19)

Subd. 6. Any person to provide false information in its application materials, fail to disclose information required on the application form, or to give false information to a city official during an inspection. (Ref. Ord. No. 2033, 2/26/19)

Subd. 7. Any person to employ any person under the age of eighteen (18) years of age to work in any massage therapy business as an employee, agent or independent contractor.

Subd. 8. Any person owning, operating or managing a massage therapy business knowingly to cause, allow, suffer or permit in or about such massage and bodywork establishment any agent, employee, independent contractor or any other person under his or her control or supervision to perform or allow such acts prohibited in subsections (1) through (8) of this section. (Ref. Ord. No. 2033, 2/26/19)

§1127.110 ADVERSE LICENSE ACTION; GROUNDS. Any of the following shall constitute sufficient grounds for denial, revocation, nonrenewal, suspension or any other appropriate adverse license action. (Ref. Ord. No. 2033, 2/26/19)

Subd. 1. The applicant or licensee is not complying with, or has a history of violations of, the laws and ordinances that apply to public health, safety and morals.

Subd. 2. The applicant or licensee is convicted of any violation, reasonably related to the licensed activity and/or occurring on the licensed premises, of any city ordinance or federal or state statute. (Ref. Ord. No. 2033, 2/26/19)

Subd. 3. The applicant or licensee has evidenced in the past willful disregard for health codes and regulations. (Ref. Ord. No. 2033, 2/26/19)

Subd. 4. The applicant fails to provide all the information and certificates required by this chapter.

Subd. 5. The licensee refuses to permit any authorized police officers or city official to inspect the premises or the operations.

Subd. 6. The applicant or licensee provides false information in its application materials, fails to disclose information required on the application form, or provides false information to a city official during an inspection. (Ref. Ord. No. 2033, 2/26/19)

Subd. 7. The massage therapy business or massage therapist is operating on property on which taxes, assessments or any financial claims of the State, County, or City are unpaid or delinquent. The City Manager may elect not to take action under this provision if the licensee provides sufficient proof of having commenced a suite under Minnesota Statutes, sections 278.01 through 278.03 to challenge the amount of taxes due. (Ref. Ord. No. 2033, 2/26/19)

Subd. 8. The licensee is found to have violated any provisions of this chapter. (Ref. Ord. No. 2033, 2/26/19)

§1127.115 ADVERSE LICENSE DECISION; PROCESS AND APPEAL.

Subd. 1. The City Manager is authorized to take an adverse license action against a massage therapy business or a massage therapist who violates any provision of this chapter. The City Manager may delegate all or part of the authority provided the City Manager under

this chapter to another city official. Adverse license actions included, but are not limited to, the suspension, revocation, denial, or nonrenewal of a license. (Ref. Ord. No. 2033, 2/26/19)

Subd. 2. In the event that the City Manager proposes an adverse license action, the City shall provide the licensee a written notice of noncompliance that identifies the items of noncompliance, what must be done to come into compliance, a date by which the required actions must be completed, and the proposed adverse license action. If the licensee fails to come into compliance as indicated in the notice, the City Manager shall provide the licensee a written notice of the adverse license action. The adverse license action shall be effective ten (10) days from the date of the written notice unless the licensee files a written notice of appeal within that time as provided in this section. (Ref. Ord. No. 2033, 2/26/19)

Subd. 3. The City Manager may immediately suspend a license issued under this chapter for up to ten (10) days upon the occurrence of any of the unlawful act is identified in Section 1127.100. Any adverse license action resulting from the violation shall be processed, and is subject to appeal, as provided in this section. (Ref. Ord. No. 2033, 2/26/19)

Subd. 4. An applicant or licensee may appeal an adverse license action by filing a written statement of appeal with the City within ten (10) days from the date of the written notice of noncompliance. The City Council shall, upon the timely filing of a written statement of appeal, conduct a public hearing on the appeal within thirty (30) days. The City shall provide the licensee at least ten (10) days written notice of the date, time, and place of the public hearing. At the public hearing, the City Council shall provide the licensee an opportunity to be heard and shall determine whether to uphold, modify, or overturn the adverse license action. The City shall provide the licensee written notice of its decision, which shall be effective immediately unless a later effective date is provided in the notice of decision.

Subd. 5. An applicant who has had a license denied, revoked, or not renewed is not eligible to reapply for the same license for one (1) year from the date of the adverse license determination or, if appealed, from the date of the City Council's decision.

§1127.120 SEVERABILITY. The provisions of this ordinance shall be severable. If any provision is found to be void, the remaining provisions of the law shall remain valid, unless the court finds the valid provisions of the law are so essentially connected with the void provisions so that the court cannot presume the Council would have enacted the remaining valid provisions without the void one; or unless the court finds the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with the legislative intent.

Ordinance 15-09-2005, 9/8/15, Effective January 1, 2016

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