

ORDINANCE 23-089

Introduced by Councilor Baker

AN ORDINANCE OF THE CITY OF ALBERT LEA, MINNESOTA AMENDING CHAPTER 12, ARTICLE X. SPAS, SAUNAS AND MASSAGE, BODYWORK AND SOMATIC THERAPIES

THE CITY COUNCIL OF THE CITY OF ALBERT LEA ORDAINS:

Sec. 12.275. Purpose.

The purpose of this section of the City Code is to prohibit massage businesses and services to the public except those licensed as 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.

Sec. 12.276. Findings of the City Council.

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

- A. Persons who have a 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 therapists can minimize the risk of the spread of communicable diseases and can promote overall health and sanitation.
- C. 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 approved institutions is an important means of ensuring the fullest measure of protecting the public health, safety, and welfare.

Sec. 12.277. 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:

Accredited Program. means an educational institution holding accredited status from a regional accrediting agency approved by the United States Department of Education presently or at the time the applicant obtained his or her diploma or certificate of graduation. The term "accredited institution" also includes a state-licensed institution.

Hot tub or whirlpool means a bath combining heat and gentle massage by using a stream of rapidly circulating water used for the purpose of bathing, relaxing or weight reduction.

Issuing Authority. The City Manager, or his or her designee. *Massage, bodywork and somatic therapies* means techniques or procedures done in a nonsexual manner intended to affect the soft tissue and/or the energetic system of another person. The application of techniques may include, but is not limited to, stroking, kneading, tapping, compression, vibration, rocking, friction, pressure, and those techniques based on manipulation or the application of pressure to the muscles or soft tissue in another person. The term "massage, bodywork and somatic therapies" may also include nonforceful passive or active movement and/or application of techniques intended to affect the energetic system of another. Use of external herbal preparations and body wraps, scrubs, and oils, powders or other skin lubricants shall be included.

Massage Therapist. An individual who practices or administers massage to the public who can demonstrate to the issuing authority that he or she:

1. Has current insurance coverage of \$1,000,000.00 for professional liability in the practice of massage;
2. Is affiliated with, employed by, or owns a therapeutic massage enterprise licensed by the City;
3. Has 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 or accredited institution licensed and verified by a state licensing board and 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 certified copy of the transcript of academic record must contain the applicant's name, last address of the institution at the time of closing, and reflect the 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 as required.

Patron means any person receiving therapy, as defined herein, where it is expected consideration will be given in exchange.

Sauna means a steam bath used for the purpose of bathing, relaxing or weight reduction, utilizing steam as the agent therefor.

Spa means any room where persons may use hot tubs, whirlpools, or saunas.

Therapeutic Massage Enterprise. An entity which operates a business which hires and/or contracts only licensed massage therapists to provide therapeutic massage to the public. The owner/operator of a therapeutic massage enterprise need not be licensed as a 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 cosmetologist 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.

Therapy or therapies means massage, bodywork, somatic techniques or procedures.

Therapy room or treatment room means any room wherein persons may, for a separate fee, receive therapy as defined in this section.

Sec. 12.278. License required.

- A. *License Required.* It is unlawful for any person to operate a sauna, massage, bodywork, somatic or spa business without a license from the city. 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.
- B. *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.
- C. *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. 12.279. Exemptions.

- A. A license is not required under this division as follows:
 - 1. For premises at which therapies or sauna or spa facilities are provided by nonprofit corporations or associations exempt from federal and state income taxes.
- B. For premises at which massage services or sauna facilities are provided by or under the direction of the following:

1. Persons dully licensed or registered in this state to practice medicine, nursing, occupational therapy, surgery, osteopathy, chiropractic, physical therapy or podiatry.
 2. Athletic directors and trainers.
 3. Cosmetologists and barbers who do not give or hold themselves out to give, massages or other service other than those customarily given in such shops and places of business for the purpose of beautification only.
- C. For premises on which saunas, but not massages, are provided incidental to the use of exercise and recreational equipment and facilities situated on the same premises.

Sec. 12.280. License application.

All applications for therapeutic massage enterprise and massage therapist licenses issued under this section shall be made on forms prescribed by the City. Application forms are required to be fully completed along with requested supporting documentation.

- A. *Terms of Licenses.* The term of a therapeutic massage enterprise license is one year. If an enterprise submits an application any time during a calendar year, the term shall expire June 30th of the year of issuance at a pro rata fee with any unexpired fraction of a month being counted as one month.
- B. *License fees.* License fees, and investigation fees are set forth in the City's annual fee schedule. No investigation fee shall be refunded.
- C. *Renewal of licenses.* An application for renewal of an enterprise or individual license shall be made in the same manner as the original application.
- D. *New and Renewal Applications that are denied.* The issuing authority will notify applicant if their new or renewal application has been denied based upon the results of the background investigation. The applicant may appeal the denial to the City Manager, or his or her designee, within 30 days of the date of the notice. A hearing will be scheduled within ten days after service of the notice of appeal upon the City Manager, or his or her designee. At the conclusion of the hearing, or as soon as thereafter as practicable, the City Manager, or his or her designee, may order:
 1. That the denial by the issuing authority be affirmed.
 2. That the denial by the issuing authority be reversed and the license be issued.

Sec. 12.281. License Restrictions and Regulations.

- A. *Transfer of license prohibited.* The license is issued to the applicant only and is not transferrable to another holder. No licensee may loan, sell, give or assign the license to another holder.
- B. *Posting of licenses.* 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 have readily available at all times that therapeutic massage services are rendered.

- C. *Licensed premises.* A therapeutic massage license is only effective for the compact and contiguous space specified in the approved license application. If the licensed premises are enlarged, altered or extended, the licensee shall inform the issuing authority within ten business days. It shall be the continuing duty of each licensee to inform the issuing authority within ten 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. A massage therapist license shall entitle the licensed therapist to perform massage at a licensed therapeutic massage enterprise, at the place of residence of the massage therapist, or at an office, business, or institution. Hotel and motel guest rooms, residential dwellings, motor vehicles, and trailers are prohibited.
- D. *Employment of unlicensed massage therapists prohibited.* No therapeutic massage enterprise shall employ or contract any person to perform massage who is not licensed as a massage therapist under this section, unless the person is specifically exempted from obtaining a massage therapist license in Section 12-282 of this Code.
- E. *Coverage of genitals during massage.* The licensee shall require that the person who is receiving the massage shall completely cover at all times genitals and breasts with non-transparent material or clothing.
- F. *Massage therapist dress/uniform requirements.* Any massage therapist performing massage shall at all times be dressed professionally, including short sleeved shirts, skirts and shorts no shorter than six inches above the knees, and no cleavage showing.
- G. *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.
- H. *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, vaginal area or breasts of a person.
- I. *Restrictions regarding hours of operation.* No therapeutic massage enterprise shall be open for business, nor will any massage therapist offer massage services, before 7:00 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 10:00 p.m. and before 7:00 a.m. daily. Support activities such as cleaning, maintenance and bookkeeping are allowed outside of business hours.
- J. *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, or his or her designee shall have the right to enter and inspect the licensed premises during the hours in which the licensed premises is open for business to ensure compliance with all provisions of this Code. Any search of the licensed premises is 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. If orders to correct are issued to the licensee and those orders are not corrected upon re-

inspection, the licensee is subject to a re-inspection fee at the rate as listed in the annual fee schedule. 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.

- K. *Posting of rates.* A licensed therapeutic massage enterprise must post their rates for service in a prominent place in the entrance or lobby of the business.
- L. *Illegal activities.* In addition to the license restrictions set forth in this section, any advertising by a licensee or representative of licensee of any potential unlawful, misleading or erotic conduct at the licensed establishment shall be prohibited. A licensee under the section 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.
- M. *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.
- N. *Food preparation.* Food preparation on site shall only occur in locations specifically designed for that purpose and with proper building permits having been obtained. Food preparation is limited to use for employees during breaks during their regular shift.
- O. *Habitation.* A licensed therapeutic massage enterprise shall not contain sleeping quarters or living spaces of any kind intended for habitation, including but not limited to beds, cots, or mattresses.
- P. *Alcoholic beverages.* Per State Statute 340A.401, no person may directly or indirectly, on any pretense or by any device, sell, consume, barter, keep for sale, charge for possession or otherwise dispose of alcoholic beverages onsite. Intoxicating alcoholic beverages does not include alcohol used in direct conjunction with massage therapy such as in cleaning.
- Q. *Change of address.* A licensed massage therapist shall inform the issuing authority of any change in residence address, or a change in the address of where massage therapy is practiced, 30 days prior to such change.

Sec. 12.282. Persons Ineligible for License.

No massage therapist license shall be issued to a person who:

1. Is not 18 years of age or older at the time the application is submitted to the issuing authority;
2. Has pending a criminal charge, citation, or complaint for any violation of federal or state statute or regulation, or of any local ordinance, which adversely reflects upon the person's ability to conduct the licensed occupation in a legal manner, violations would include, prostitution or the solicitation, inducement, or promotion thereof, sex trafficking, and criminal sexual conduct;

3. Has been convicted of any crime directly related to the occupation licensed as prescribed by Minnesota Statutes 364.03, Subd. 2, as it may be amended from time to time, 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 364.03, Subd. 3, as it may be amended from time to time;
4. Whether the applicant has had an interest individually or as part of a corporation, partnership, association, enterprise, business or firm, a massage license that was denied, revoked or suspended within the last five years of the date the license application is submitted to the issuing authority;
5. Is not a citizen of the United States or a resident alien, or is legally prohibited from working in the United States;
6. Has knowingly misrepresented or falsified information on the license application at any time;
7. Cannot meet the definition of massage therapist in Section 2.277 of this Code;
8. Allowed a license to expire or surrendered a license, unless, at the sole discretion of the City, a license application is submitted for consideration. The application shall be treated the same as an application for a new license, subject to all ordinance regulations and review;
9. Does not provide all information required or answer fully all of the information requested by the license application or such other information as the City may require;
10. Is not affiliated with, employed by, or does not own a therapeutic massage enterprise licensed by the City.

Sec. 12.283. Revocation or Suspension of License

A. *Suspension or revocation.* The issuing authority may suspend or revoke a license issued pursuant to this section 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 of the Code 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 364.03, Subd. 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 public, or after repeated complaints received regarding conduct of business practices or method of solicitation.
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 a therapeutic massage enterprise license fails to maintain with the City a current list of all employees of such licensed premises.
 8. Neither the charging of a criminal violation nor a criminal conviction is required in order for the Director of Public Safety to suspend or revoke a license.
 9. In the event of multiple massage enterprise locations, any license suspension/revocation shall apply to any and all massage enterprise locations.
 10. Any pending criminal charge, citation, or complaint against the owner, manager, lessee, or an employee of the therapeutic massage enterprise, or the holder of a massage therapist license, of a violation of any ordinance or state or federal statute which adversely reflects upon the person's ability to conduct the licensed occupation in a legal manner.
- B. *Appeal process for suspension or revocation.* The licensee may appeal a license suspension or revocation to the City Manager, or his or her designee, within 30 days of the license being suspended or revoked by the issuing authority. A hearing will be scheduled within ten days after service of the notice of appeal upon the City Manager, or his or her designee. At the conclusion of the hearing, or as soon as thereafter as practicable, the City Manager, or his or her designee, may order:
1. That the suspension or revocation by the issuing authority be affirmed.
 2. That the suspension or revocation by the issuing authority be reversed or modified.
- C. *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. Each violation of this section shall constitute a separate offense. Conviction of violation of this section, while not required, may be grounds for the suspension or revocation of any license issued under this section.
- D. *Ability to reapply after revocation.* The holder of a therapeutic massage enterprise license or massage therapist license may not reapply for a new license for a period of five years if their license is revoked under this section.
- E. *Ability to reapply after denial.* The applicant for a massage enterprise license or massage therapist license may not reapply for a license for a period of five years if the applicant's license has been previously denied by the City or another governmental entity for any reason.
- F. *Previous license infractions.* In the event there is a license infraction or a pending citation involving a licensed establishment and/or a licensed massage therapist, the issuing authority may, at their option, chose not to take action on any license or renewal application until such infraction or pending citation has been resolved. The applicant for a massage enterprise license or massage therapist license may not reapply for a license for a period of five years if the licensee is convicted of any violation of the ordinance.

Sec, 12.284. 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 massage therapy table or chair on which the patron receives the massage; or in the alternative, if the massage therapy table or chair on which the patron receives the massage is made of material impervious to moisture, such massage therapy table, chair shall be properly sanitized after each massage.
- C. *Washing of hands required.* The licensed 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.
- E. *Equipment.* All modalities shall be performed on a raised massage therapy table or chair; no bed, mattress, or other similar type equipment shall be allowed onsite except for a mat similar to those used in yoga.
- F. *Prohibited Modalities.* Modalities involving work performed on the floor or requiring a massage therapist to stand on a massage therapy table, including but not limited to Shiatsu are strictly prohibited unless completely clothed and massage therapist is certified in Shiatsu or other modality by an approved institution or program.

Sec. 12.285. Construction and maintenance requirements.

- A. All sauna rooms and restrooms and bathrooms used in connection therewith shall be constructed of materials that are impervious to moisture, bacteria, mold and fungus growth.
- B. Floors, walls and equipment in sauna rooms, in restrooms and in bathrooms used in connection therewith must be kept in a state of good repair and clean at all times. Linens and other materials shall be stored at least twelve (12) inches off the floor. Clean towels and washcloths must be made available to each customer.
- C. The premises shall contain adequate refuse receptacles.
- D. Other specifications are contained in guidelines from the state department of health, whirlpool, spas, and hot tubs, current addition, from the section of water supply and engineering.

