

ORDINANCE NO. ____

AN ORDINANCE REPEALING AND REPLACING CHAPTER 125 OF THE FRIDLEY CITY CODE RELATED TO THE LICENSING OF MASSAGE THERAPY BUSINESSES AND MASSAGE THERAPISTS

THE CITY COUNCIL OF THE CITY OF FRIDLEY HEREBY ORDAINS AS FOLLOWS:

Section One. Repeal and Replacement. Chapter 125 of the Fridley City Code is hereby repealed in its entirety and replaced as follows and is hereby ordained and adopted:

CHAPTER 125. MASSAGE THERAPY BUSINESSES AND MASSAGE THERAPISTS

125.01. PURPOSE AND FINDINGS

1. Purpose. The purpose of this chapter of the city code is to prohibit the operation of massage businesses and the offering of massage services to the public except by those licensed as massage therapy businesses and massage therapists pursuant to this chapter. The licensing regulations prescribed herein are necessary in order to protect legitimate businesses, 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.
2. Findings of the City Council. The city council makes the following findings regarding the need to license massage therapy businesses and massage 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 massage therapy businesses and therapists can minimize the risk of the spread of communicable diseases and can promote overall health and sanitation.
 - C. Establishing license qualifications for massage therapy businesses and therapists can minimize the risk that such businesses and persons will facilitate prostitution and other criminal activity in the community.
 - D. Massage therapy businesses which employ persons with no specialized and standardized training can tax 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.
 - E. 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.

125.02. DEFINITIONS

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

1. Accredited Institution.

An educational institution holding accredited status with at least one of the federally-recognized accrediting agencies.

2. Accredited Program.

A massage therapy program accredited by an educational institution holding accredited status in the field of massage therapy with at least one of the federally-recognized accrediting agencies.

3. Advertise.

To publish, display, broadcast or disseminate information by any means that can be reasonably construed as an advertisement.

4. Clean.

The absence of dirt, grease, rubbish, garbage, and other offensive, unsightly or extraneous matter.

5. 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.

6. Issuing Authority.

The City Council.

7. Massage or Massage Services.

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, arms, or elbows 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.

8. Massage Therapy Business.

A person or entity which operates a business which hires or contracts with massage therapists licensed by the city to provide massage services to the public. The owner/operator of a massage

therapy business 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 massage therapy business 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 massage services to the public.

9. Massage Therapist.

An individual who practices or administers massage to the public for consideration.

10. Operate.

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

11. Person.

Any individual, firm, entity, association, partnership, corporation, joint venture or combination of individuals.

125.03. LICENSE REQUIRED

1. Massage Therapy Business License. It shall be unlawful for any person or entity to own, operate, engage in, or carry on, within the city, any type of business offering massage services to the public for compensation without first having obtained a Massage Therapy Business license from the City pursuant to this section.

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

125.04. EXCEPTIONS

A Massage Therapy Business or Massage Therapist license is not required for the following persons and places:

1. Persons duly licensed in this state to practice medicine, surgery, osteopathy, chiropractic, physical therapy, or podiatry, provided the massage is administered by the individual in the regular course of the medical business and not provided as part of a separate and distinct Massage Therapy 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 hired or employed by a person duly licensed by this state pursuant to Minnesota Statutes Chapters 147 or 148, or a dental professional licensed under Chapter 150A. Such persons shall only be authorized to provide massage services on the business premises of the employer.
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 may perform massage services at clinics or other facilities located outside of the accredited institution provided that they have at least 150 hours of certified therapeutic massage training at the accredited institution prior to performing the massage services outside of the institution, have proof of liability insurance, and are identified to the public as a student of massage therapy.
6. Persons or organizations providing temporary massage services such as “chair massages” provided the following requirements are met:
 - A. The massage is provided in a place of business where the massage can easily be seen by any employee or visitor on the premises;
 - B. The location does not hold a license to sell alcoholic beverages;
 - C. Massages are offered at the location no more than ten (10) days per calendar year;
 - D. Each recipient of a massage remains in an upright position, either sitting or standing; and
 - E. Each recipient of a massage remains in the normal daytime attire worn when entering the business and does not remove any clothing except outerwear such as a coat or jacket.

125.05. LICENSE APPLICATION

Licenses shall expire on April 30th of each year. All applicants shall complete and submit the requisite license application form provided by the City and provide all information required there, as well as comply with providing the following information:

1. Massage Therapy Business License Application.
An application for a Massage Therapy Business license shall be made on a form supplied by the City Clerk and shall include the following information:
 - A. All Applicants.

For all Massage Therapy Business license applicants:

- (1) Proof that the proposed business location meets the zoning requirements of the City's zoning code.
- (2) Whether the applicant is an individual, partnership, corporation or other form of organization.
- (3) The legal description of the premises to be licensed together with a site plan showing dimensions, location of buildings, street access, and parking facilities.
- (4) The floor number, street number, suite number(s) and rooms where the massage services are to be conducted.
- (5) 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 City.
- (6) Whether all city utilities, 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 amount in arrears and the time period the delinquency encompasses.
- (7) All applications for licenses shall be signed and notarized. If the application is that of a natural person, it shall be signed and notarized 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, suspension or revocation of the license.
- (8) The amount of investment the applicant has invested in the business, buildings, premises, fixtures, furniture and equipment, and proof of the source of such investment. If a partnership, corporation, or other form of organization, the names and addresses of any 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.
- (9) 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 from the date the license application is submitted to the City.
- (10) Such other information as City staff or the city council shall require.

B. Individuals.

For Massage Therapy Business license applicants who are individuals:

- (1) Full name, all aliases used, full address, phone number, and email address.
- (2) Proof of whether the applicant is a citizen of the United States, a resident alien or has the legal authority to work in the United States.
- (3) Whether the applicant is currently licensed in other communities to perform massage therapy, and if so, where.
- (4) Names of the applicant's employers for the preceding five (5) years along with the dates for such employment, occupations, employers addresses and contact information, including phone numbers and email addresses.
- (5) 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 each conviction.
- (6) Whether the applicant has ever been engaged in the operation of a massage therapy business or worked as a massage therapist. If so, applicant shall furnish information as to the name, place and length of time of the involvement in such an establishment and/or work as a massage therapist and state if the applicant has ever had a massage business or therapist license denied, suspended, revoked, or not renewed in any other city.
- (7) A list of residential address at which the applicant has lived for the preceding five (5) years.
- (8) Whether the applicant has had an interest in, as an individual or as part of a partnership, corporation, or other form of organization that has had a massage license revoked or suspended within the last five (5) years of the date of the license submitted to the City.

C. Partnerships.

For Massage Therapy Business license applicants that are partnerships:

- (1) The names of all general and limited partners and all information concerning each general partner as is required for individual license applicants.
- (2) The managing partner(s) shall be so designated.

- (3) The interest of each general and limited partner in the business shall be disclosed.
- (4) A true copy of the partnership agreement shall be submitted with the application. If the partnership is required to file a certificate as to a trade name under Minn. Stat. § 333.02, a certified copy of such certificate shall be submitted.

D. Corporations and Other Organizations or Entities.

For Massage therapy business license applicants that are corporations or other types of organizations:

- (1) The name of the organization, and if incorporated, the date and state of incorporation.
- (2) A true copy of the certificate of incorporation, and, if a foreign corporation, a certificate of authority as described in Minn. Stat. § 303.02.
- (3) The name of the general manager, corporate officers, and proprietor or other person in charge of the premises to be licensed, and all the information about said persons required for individual license applicants.
- (4) A list of all persons who own or have a controlling 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.

2. Massage Therapist License Application.

An application for a Massage Therapist license shall be made on a form supplied by the City Clerk and shall include the following information:

- A. The applicant's full name, all aliases, full residential address, home telephone number, cell phone number, and email address.
- B. The applicant's residential addresses for the previous five (5) years.
- C. The name of applicant's current employer, full address, and length of time employed.
- D. The names, address, occupations, dates of employment and contact information for the applicant's employers for the previous five (5) years.
- E. The applicant's birth date, physical description, including weight, height, color of eyes, and color of hair. The applicant shall provide an enlarged color photocopy of the applicant's driver's license or state-issued I.D. front and back, or any other

government-issued photo identification. If the photocopy is unacceptable to the police chief, or designee, the police department may take photographs for the file.

- F. 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 each conviction.
- G. Whether the applicant has had an interest in, as an individual or as part of a corporation, partnership, association, enterprise, entity, business or firm, a massage license that was revoked or suspended within the last five (5) years from the date the license application is submitted to the City.
- H. The names, residential and business addresses, and current contact information, including a phone number, for three (3) residents within 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 attest to the applicant's character.
- I. Proof of whether the applicant is a U.S. citizen, resident alien, or has the legal authority to work in the United States.
- J. Proof that the applicant has met the following requirements:
 - (1) Is affiliated with, employed by, or owns a business licensed as a Massage Therapy Business by the City.
 - (2) Provides proof that the applicant has met the academic requirements by providing the following:
 - a. A certified copy of a transcript of academic record from an accredited program or accredited institution that has been approved by the City; and
 - b. A copy of the diploma or certificate of graduation from an accredited program or accredited institution approved by the City. The accredited program or accredited institution must confirm that the applicant has successfully completed a minimum of 600 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 the same accredited program or accredited institution; and
 - c. Proof of current insurance coverage of \$1,000,000.00 for professional liability in the practice of massage;

- (3) In lieu of the academic requirement listed herein, the applicant may provide proof of passage of the National Certification Exam offered by the National Certification Board for Therapeutic Massage and Bodywork and a minimum of seven (7) years of full-time work experience as a massage therapist within the United States. The applicant is still required to provide proof of compliance with the remaining provisions of this section.

- K. Whether the applicant is currently licensed in other communities to perform massage therapy, and if so, where as well as whether the applicant has ever had a massage-related license denied, suspended, revoked, or not renewed in any other community.

- L. Whether the applicant has ever been engaged in the operation of a massage therapy business, and if so, information as to the name, place, dates and length of time of the involvement in such a business, including whether the business has ever had a license for the business denied, suspended, revoked, or not renewed.

- M. Such other information as the city council or staff shall require for the purpose of approving the license.

125.06. TERM AND RENEWAL OF LICENSE

- 1. Licenses shall be issued for a term of one year. All Massage Therapy Business and Massage Therapist licenses shall expire on April 30th of each year. Licenses are non-transferable.

- 2. An application for a renewal of a Massage Therapy Business or Massage Therapist license shall be made in the same manner as the original application. The license and investigative fees shall be the same as the initial license application set forth in Chapter 11 of this code.

- 3. If the license holder is a corporation, a new license application shall be submitted to the City within thirty (30) days whenever more than ten percent (10%) of the corporation's stock is transferred. If the license holder is a partnership, a new license application shall be submitted to the City within thirty (30) days whenever a partner is added to the partnership.

- 4. After the completion of the initial license and renewal verification process for the Massage Therapy Business license, City staff shall present a memo recommending approval or denial of the business license to the city council in accordance with this section. If the license 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 within ten (10) business days of the denial.

125.07. LICENSE FEE

The fees for Massage Therapy Business and Massage Therapist licenses shall be set in Chapter 11 of this code. An investigation fee shall be charged for Massage Therapy Business and Massage Therapist licenses as set in Chapter 11 of this code. Each application for a license shall be

accompanied by payment in full of the required license and investigation fees. An application shall be deemed incomplete unless it is accompanied with the required fees, all documentation required by this section, and is completed in its entirety.

125.08. LICENSE APPLICATION INVESTIGATION AND VERIFICATION

All applications shall be referred to the police chief, or 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 police chief, or 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 application. The police chief, or designee, is authorized to access data maintained in the Minnesota Bureau of Criminal Apprehension's Computerized Criminal History information system in accordance with BCA policy. The police chief, or designee, and other consultants shall make a written recommendation to the City Council as to the issuance or non-issuance of the Massage Therapy Business or Massage Therapist license. The City Council may order and conduct such additional investigation as it deems necessary. Upon completion of its investigation the City Council shall grant or deny the license.

No investigation fee in part or whole shall be refunded. Out of state investigations shall require the applicant to pay actual out-of-pocket expenses. A deposit for an out-of-state investigation shall be required in advance as set forth in Chapter 11. The applicant shall be refunded any unused deposit upon completion of the investigation if the application is denied.

125.09. INSPECTIONS

In light of the high risk of involvement with illegal conduct an establishment providing massage therapy poses to the general public, City staff and/or the 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 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 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.

125.10. LICENSE DENIAL, SUSPENSION OR REVOCATION

In addition to the grounds found elsewhere in the City Code, the following reasons are grounds for the denial, suspension, or revocation of a Massage Therapy Business or Massage Therapist license:

1. The applicant has been convicted of criminal prostitution, similar sex offenses, or other crimes directly related to the offering of massage therapy services or the running of a massage therapy business and 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, subd. 3.

2. The applicant is a partnership, corporation, or other entity which has in its employ or is owned by any persons convicted of criminal prostitution, similar sex offenses, or other crimes directly related to the offering of massage therapy services or the running of a Massage Therapy Business.
3. The owner, manager, lessee or any of the employees are found to be in control or possession of any alcoholic beverages, narcotic drugs or controlled substances, as defined by state statutes, on the premises.
4. If the holder of a business license fails to maintain with the City a current list of all employees of such licensed premises. The list for the establishment shall include all massage therapists licensed under this chapter.
5. A material variance in the actual plan and design of the premises from the plans submitted.
6. There is any fraud, deception, or misstatement on the license application.
7. The owner, manager, lessee, or their employees or any massage therapist, are convicted of any ordinance violation or crime occurring on the licensed premises.
8. The licensed premises are not located in an approved zoning district or otherwise do not meet the health and safety standards found within the City Code for the licensed premises.
9. The applicant is delinquent upon its payment to the City of utilities, taxes, fines, or penalties assessed or imposed against the applicant.
10. The licensed activity is conducted in such a manner as to constitute a breach of the peace, a menace to the health, safety, or welfare of the public, or a disturbance of the peace or comfort of the residents of the City, upon recommendation of the police department or an appropriate City official.
11. The licensee fails to continuously comply with all conditions required as precedent to approval of the license.
12. Based on the findings of a background investigation, granting a license would be a menace to the safety, health, morals, or welfare of the public.
13. The applicant or licensee is not of good moral character.
14. The applicant or licensee is not the real party in interest of the enterprise.

The City Council may suspend or revoke a Massage Therapist or Massage Therapy Business license following provision of written notice to the licensee and a hearing. Notice shall be provided to the license holder in writing at least seven (7) days prior to 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.

125.11. LICENSE RESTRICTIONS

1. Posting of License.

- A. Business License. A Massage Therapy Business license must be posted in a conspicuous place on the premises for which it is issued.
- B. Massage Therapist License. A person licensed as a Massage Therapist shall post the Massage Therapist license, along with a color photo, in a conspicuous place on the premises at which the therapist is associated. A Massage Therapist shall have readily available at all times when massage services are rendered a government-issued photo identification card.

2. Licensed Premises.

- A. Business License. A Massage Therapy Business license is only effective for the compact and contiguous space specified in the approved license application. If, following issuance of the license, the licensed premises is enlarged, altered, or extended, the licensee shall inform the City Clerk of the same within ten (10) business days of the enlargement, alteration, or extension. The licensee shall meet with designated City staff who shall confirm that the enlarged, altered, or expanded space is in full compliance with all City regulations, including the building code. If the enlarged, altered, or expanded space is in full compliance with all City regulations, the business license shall be amended to encompass the larger space.
- B. Massage Therapist License. A Massage Therapist license shall only be issued for the location of the licensed Massage Therapy Business premises. It shall be the continuing duty of each licensee to notify the City Clerk, within ten (10) business days, of any change in the information or facts required to be furnished on the license application and failure to comply with this section shall constitute cause for revocation or suspension of such license.

3. Affiliation with Business Required. A Massage Therapist shall be employed by, affiliated with, or own a Massage Therapy Business licensed by the City, unless a person or place is specifically exempted from obtaining a Massage Therapy Business license pursuant to this chapter.

4. Employment of Unlicensed Massage Therapists Prohibited. No Massage Therapy Business shall employ or use any person to perform massage services who is not licensed as a Massage Therapist under this section, unless the person is specifically exempted from obtaining a Massage Therapist license pursuant to this chapter.

5. 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.
6. Therapist Dress Requirements. Any Massage Therapist providing massage services shall at all times be dressed professionally.
7. Massage of Certain Body Parts Prohibited. At no time shall a Massage Therapist intentionally massage or offer to massage the penis, scrotum, mons veneris, vulva, breasts, or vaginal area of a person.
8. Restrictions Regarding Hours of Operation. No Massage Therapy Business shall be open for business, nor will any Massage Therapist offer massage therapy 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.
9. 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 or by a licensed massage therapist shall be prohibited. A licensee under this section shall be strictly responsible for the conduct of the business being operated in compliance with all applicable law and ordinances, including the actions of any employee or agent of the licensee on the licensed premises.
10. Restrictions Involving Minors. No license may be issued to a person under eighteen (18) years of age.

125.12. RESTRICTIONS REGARDING SANITATION, HEALTH AND SAFETY

1. Toilet Room Requirements. A Massage Therapy Business 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.
2. Paper/Linen Requirements. A Massage Therapy Business 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.
3. Washing of Hands Required. The premises shall contain an on-site sink. 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.

4. Door Latches and Locks. Doors on rooms where massage services are provided 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.

125.13. PENALTIES

Whoever does any act forbidden by this Chapter or omits or fails to do any act required by this Chapter shall be guilty of a misdemeanor and is subject to all penalties provided for such violations under the provisions of Chapter 901 of the Fridley City Code.

Section Two. Effective Date. This Ordinance shall be effective beginning on August 1, 2018, following its adoption and publication according to law.

Section Three. Fees. That Section 11.11 be hereby amended and ordained as follows:

125	Saunas and Massage Parlors –Business Investigation Fee –Operation and Maintenance –Certificate Investigation –Employee Massage Practice Certificate	\$1,500 \$3,000/year \$100 each \$50 each/year
125	<u>Massage Therapy Business License Fee</u> <u>Business Investigation Fee</u> <u>Massage Therapist License Fee</u> <u>Therapist Investigation Fee</u>	<u>\$</u> <u>\$200</u> <u>\$25</u> <u>\$25</u>

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF FRIDLEY THIS ____ DAY OF _____ 2018.

SCOTT J. LUND, MAYOR

ATTEST:

DEBRA A. SKOGEN, CITY CLERK

First Reading: May 29, 2018
Second Reading:
Publication: