

**Ordinance No. 11-11-633
Monona Common Council**

**AN ORDINANCE AMENDING CHAPTER 9 OF THE CODE OF ORDINANCES TO
REMOVE THE REGULATION OF MASSAGE TECHNICIANS**

WHEREAS, the State of Wisconsin has preempted municipal regulation of massage technicians through the passage of section 460.17 of the Wisconsin Statutes.

NOW, THEREFORE, the Common Council of the City of Monona, Dane County, Wisconsin, do ordain as follows:

SECTION 1. Chapter 7-9 of the Monona Code of Ordinances is hereby amended as follows:

Chapter 9

Massage Establishments ~~and Technicians~~ and Technicians

7-9-1	Definitions
7-9-2	License Required
7-9-3	Application for License
7-9-4	Investigation of Application
7-9-5	Grant of License
7-9-6	Regulation of Massage Technicians
7-9-67	Regulation of Massage Technicians
7-9-6	<u>Regulation of Massage Establishments</u>
7-9-78	Inspection of Licensed Premises
7-9-89	Suspension and Revocation of License

Sec. 7-9-1 Definitions.

- (a) **Massage.** Any process or procedure consisting of rubbing, stroking, kneading or tapping by physical or mechanical means, upon the external parts or tissues of the body of another for a consideration.
- (b) **Massage Establishment.** Any place of business where private massage is practiced, used, or made available as a principal use of the premises.
- (c) **Massage Technician.** A person who practices, administers, or uses or offers to practice, administer or use massage for consideration.

Sec. 7-9-2 License Required.

- (a) **Establishment.** No person, corporation, or other legal entity shall cause or permit the operation of a massage establishment within the City without first having obtained a license. A separate license shall be required for each such establishment.
- (b) **Massage ~~Technician~~ Technician.**

- ~~(1) No person shall administer a massage within the City without first having obtained a license holding a valid certification as a massage therapist or bodyworker from the State of Wisconsin~~
- ~~(2) No person shall be granted a license to administer massages unless such person is:~~
 - ~~a. A graduate of a recognized massage or therapy school. A recognized massage or therapy school is any school or institution which has for primary purpose the teaching of the theory, method, and/or profession of massage and work of not less than seventy (70) hours to be given in not less than three (3) calendar months before the student is entitled to a diploma or certificate of graduation.~~
 - ~~b. a. Applicants must be Eighteen eighteen (18) years of age or over.~~
- (c) Applicants for a massage establishment license must be eighteen (18) years of age or over. **Exemptions.** No license shall be required hereunder for the following while engaged in the duties of their respective professions:
 - ~~(1) Physicians, surgeons, chiropractors, osteopaths or physical therapists licensed or registered to practice their respective professions under the laws of the State of Wisconsin, or nurses registered under the laws of the State of Wisconsin acting under their direction and control.~~
 - ~~(2) Barber shops and beauty parlors, barbers and beauticians licensed under the laws of the State of Wisconsin, provided such massage as is practiced is limited to the head and scalp.~~
 - ~~(3) Accredited high school and college coaches and trainers therein while acting within the scope of their employment.~~
 - ~~(4) Such other individuals who may be exempted after a showing of good cause to the License Review Committee.~~
 - ~~(5) Individuals possessing a valid certification as a massage therapist or bodyworker from the Wisconsin Department of Regulation and Licensing pursuant to Chapter 460 of the Wisconsin Statutes are exempt from the requirements of Section 7-9-2(b) above.~~

Sec. 7-9-3 Application for License.

- (a) **Establishment.** All applications shall include:
 - (1) The location and mailing address of the proposed establishment.
 - (2) For an individual or for each person of a partnership or joint venture or agent of a corporation:
 - a. Name and present address.
 - b. Height, weight, color of hair and eyes, social security number, written proof of age, two (2) photographs not less than thirty (30) days old, and at least two inches by two inches (2" x 2").
 - c. Whether a similar license had been revoked or suspended and, if so, the reason therefore and the location thereof.
 - d. Whether convicted of any crime or ordinance violation other than traffic offenses within the past three (3) years and, if so, a listing of the same and the locations thereof.
 - (3) If the applicant is a corporation, the names and addresses of each officer and director and of the stockholders of such corporation, together with the extent of the ownership of each, and a statement whether such officer, director or stockholder holds office or stock in any other corporation conducting a similar business in the State of Wisconsin. Such application shall be made by an agent registered as such who shall be a resident of the City of Monona.
 - (4) All phone numbers of the proposed establishment.
 - (5) The names, addresses and phone numbers of all persons employed by the applicant at the proposed establishment at the time of application.
 - (6) The application shall contain a statement signed by the applicant and each individual of a partnership or joint venture that all information contained therein is true and correct.

~~(b) **Massage Technician.** All applications shall include:~~

- ~~— (1) Applicant's full name and present address, social security number, written proof of age in excess of eighteen (18) years, height, weight, color of hair and eyes, and two (2) photographs not less than thirty (30) days old and at least two inches by two inches (2" x 2"). Photograph needed only with original application, not with renewal.~~
- ~~— (2) Name and address of the recognized school attended by such person with a copy of the diploma or certificate of graduation as required by Section 7-9-2(b)2. Copy of diploma or certificate need only with original application, not with renewal.~~
- ~~— (3) Whether the applicant has had a similar permit revoked or suspended and, if so, the reason therefore and the location thereof.~~
- ~~— (4) Whether the applicant has been convicted of any crime or ordinance violation other than traffic offenses within the past three (3) years and, if so, a listing of the same and the locations thereof.~~
- ~~— (5) The name and address of the licensed massage establishment by which the applicant is employed.~~
- ~~— (6) A statement signed by the applicant that all information contained therein is true and correct.~~

Sec. 7-9-4 Investigation of Application.

The City Clerk shall refer the application to the Police Department which shall investigate and determine whether the applicant and the establishment proposed to be licensed conform to the requirements of this Chapter. The Police Department shall refer the application to the Building Inspector who shall investigate the premises proposed to be licensed to determine whether the premises conform to the requirements of this Section, the rules and regulations of the Department of Health and Social Services, and any other applicable laws and ordinances.

Sec. 7-9-5 Grant of License.

Issuance or Denial of Operator's Massage Establishment Licenses.

- (a) ~~After~~ the City Clerk shall approve the granting of a massage Massage technician Establishment license- if the City Clerk finds the application to be complete, the application fee has been paid in full, the applicant meets the qualifications for such license, and the establishment and proposed premises conform to the requirements of this Chapter ~~the City Clerk shall issue the license.~~ Such licenses shall be issued and numbered in the order they are granted and shall give the applicant's name and address and the date of the expiration of such license.
- (b) (1) If the application is denied by the City Clerk, the City Clerk shall, in writing, inform the applicant of the denial, the reasons therefore, and of the opportunity to request a reconsideration of the application by the License Review Committee in a closed session.
- (2) The License Review Committee is the official hearing body.
- (3) Recommendations for denial from the Police Department shall be accompanied by written comments outlining reasons for the recommendation. These comments should be entered on the license application.
- (4) A representative from the Police Department should attend the License Review Committee meeting at which denials are discussed.
- (5) The applicant may have letters of reference (letter to state who this letter is from) and/or witnesses. The applicant may be represented by legal counsel at the License Review Committee meeting.
- (6) At such reconsideration meeting, the applicant may present evidence and testimony as to why the license should be granted.
- (7) If, upon reconsideration, the Committee again denies the application, the City Clerk shall notify the applicant in writing of the reasons therefore. An applicant who is denied any license upon

reconsideration of the matter, may apply to the Common Council for an appeal of the License Review Committee denial.

- (c) Because a license is a privilege, the issuance of which is a right granted solely by the City, the License Review Committee reserves the right to consider the severity, and facts and circumstances of the offense when making the determination to deny or not renew a license.

~~Sec. 7-9-6 — Regulation of Massage Technicians.~~

~~No person licensed as a massage technician hereunder shall massage the genital parts of any patron or the breasts of a female patron. During massage the private parts of patrons shall be covered by towels, cloths, or undergarments. Massage technicians shall be fully clothed from the neck to the knees in clean, opaque clothing. No massage technician shall administer a massage at any place within the City except in a licensed massage establishment.~~

Sec. 7-9-76 Regulation of Massage Establishments.

- (a) There shall be on the licensed premises at all times a massage technician. The licensee of the establishment shall personally supervise the conduct of the business thereon and shall not violate or permit any technician or employee in his or her employ to violate any provision of this Chapter. A violation of any provision of this Chapter by an officer, employee, or technician shall constitute a violation by the licensee of the establishment.
- (b) No alcohol beverages shall be sold or used on the premises.
- (c) No licensed premises shall be open for business except between 8:00 a.m. and 10:00 p.m.
- (d) All licensed premises shall be maintained in a clean and sanitary condition and in compliance with all City ordinances and state laws and regulations.

Sec. 7-9-87 Inspection of Licensed Premises.

The licensed premises shall be open at all times to inspection by the police officers of the City or the Health Officer or Building Inspector for the purpose of determining whether the premises and the technicians and employees are complying with the provisions of this Section.

Sec. 7-9-98 Suspension and Revocation of License.

Any license issued hereunder may be suspended by the Chief of Police or the Mayor for violation of any provision of this Chapter. Upon such suspension the licensee shall be given notice of the reasons for the suspension or revocation and opportunity to be heard before the License Review Committee for the purpose of determining whether such suspension or revocation shall be removed or whether the license shall be suspended or revoked. Any party aggrieved by a decision of the License Review Committee may appeal such action to the Common Council.

~~Massage Establishments and Technicians~~

SECTION 2. This ordinance shall take effect upon passage and publication as provided by law.

Adopted this _____ day of _____, 2011.

BY ORDER OF THE COMMON COUNCIL

Robert E. Miller
Mayor

ATTEST:

Joan Andrusz
City Clerk

Approval Recommended By: License Review Committee (11/8/11)
Approved As To Form By: William S. Cole, City Attorney – 11/15/11

Council Action:

Date Introduced: 11-21-11

Date Approved: _____

Date Disapproved: _____

Chapter 9

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- (c) Applicants for a massage establishment license must be eighteen (18) years of age or over.

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 - (2) For an individual or for each person of a partnership or joint venture or agent of a corporation:
 - a. Name and present address.
 - b. Height, weight, color of hair and eyes, social security number, written proof of age, two (2) photographs not less than thirty (30) days old, and at least two inches by two inches (2" x 2").
 - c. Whether a similar license had been revoked or suspended and, if so, the reason therefore and the location thereof.
 - d. Whether convicted of any crime or ordinance violation other than traffic offenses within the past three (3) years and, if so, a listing of the same and the locations thereof.

- (3) If the applicant is a corporation, the names and addresses of each officer and director and of the stockholders of such corporation, together with the extent of the ownership of each, and a statement whether such officer, director or stockholder holds office or stock in any other corporation conducting a similar business in the State of Wisconsin. Such application shall be made by an agent registered as such who shall be a resident of the City of Monona.
- (4) All phone numbers of the proposed establishment.
- (5) The names, addresses and phone numbers of all persons employed by the applicant at the proposed establishment at the time of application.
- (6) The application shall contain a statement signed by the applicant and each individual of a partnership or joint venture that all information contained therein is true and correct.

Sec. 7-9-4 Investigation of Application.

The City Clerk shall refer the application to the Police Department which shall investigate and determine whether the applicant and the establishment proposed to be licensed conform to the requirements of this Chapter. The Police Department shall refer the application to the Building Inspector who shall investigate the premises proposed to be licensed to determine whether the premises conform to the requirements of this Section, the rules and regulations of the Department of Health and Social Services, and any other applicable laws and ordinances.

Sec. 7-9-5 Grant of License.

Issuance or Denial of Massage Establishment Licenses.

- (a) The City Clerk shall grant a Massage Establishment license if the City Clerk finds the application to be complete, the application fee has been paid in full, the applicant meets the qualifications for such license, and the establishment and proposed premises conform to the requirements of this Chapter. Such licenses shall be issued and numbered in the order they are granted and shall give the applicant's name and address and the date of the expiration of such license.
- (b)
 - (1) If the application is denied by the City Clerk, the City Clerk shall, in writing, inform the applicant of the denial, the reasons therefore, and of the opportunity to request a reconsideration of the application by the License Review Committee.
 - (2) The License Review Committee is the official hearing body.
 - (3) Recommendations for denial from the Police Department shall be accompanied by written comments outlining reasons for the recommendation. These comments should be entered on the license application.
 - (4) A representative from the Police Department should attend the License Review Committee meeting at which denials are discussed.
 - (5) The applicant may have letters of reference (letter to state who this letter is from) and/or witnesses. The applicant may be represented by legal counsel at the License Review Committee meeting.
 - (6) At such reconsideration meeting, the applicant may present evidence and testimony as to why the license should be granted.
 - (7) If, upon reconsideration, the Committee again denies the application, the City Clerk shall notify the applicant in writing of the reasons therefore. An applicant who is denied any license upon reconsideration of the matter, may apply to the Common Council for an appeal of the License Review Committee denial.

- (c) Because a license is a privilege, the issuance of which is a right granted solely by the City, the License Review Committee reserves the right to consider the severity, and facts and circumstances of the offense when making the determination to deny or not renew a license.

Sec. 7-9-6 Regulation of Massage Establishments.

- (a) There shall be on the licensed premises at all times a massage technician. The licensee of the establishment shall personally supervise the conduct of the business thereon and shall not violate or permit any technician or employee in his or her employ to violate any provision of this Chapter. A violation of any provision of this Chapter by an officer, employee, or technician shall constitute a violation by the licensee of the establishment.
- (b) No alcohol beverages shall be sold or used on the premises.
- (c) No licensed premises shall be open for business except between 8:00 a.m. and 10:00 p.m.
- (d) All licensed premises shall be maintained in a clean and sanitary condition and in compliance with all City ordinances and state laws and regulations.

Sec. 7-9-7 Inspection of Licensed Premises.

The licensed premises shall be open at all times to inspection by the police officers of the City or the Health Officer or Building Inspector for the purpose of determining whether the premises and the technicians and employees are complying with the provisions of this Section.

Sec. 7-9-8 Suspension and Revocation of License.

Any license issued hereunder may be suspended by the Chief of Police or the Mayor for violation of any provision of this Chapter. Upon such suspension the licensee shall be given notice of the reasons for the suspension or revocation and opportunity to be heard before the License Review Committee for the purpose of determining whether such suspension or revocation shall be removed or whether the license shall be suspended or revoked. Any party aggrieved by a decision of the License Review Committee may appeal such action to the Common Council.