

ORDINANCE NO. 1507

AN ORDINANCE REGULATING MASSAGE THERAPY BUSINESSES AND MASSAGE THERAPISTS IN THE CITY OF WILLMAR

The City Council of the City of Willmar hereby ordains as follows:

Section 1. AMENDMENT OF MUNICIPAL CODE, CHAPTER 8, LICENSES, PERMITS AND BUSINESS REGULATIONS. Chapter 8 of the Willmar Municipal Code is hereby amended by adding a new Article X, Massage Therapy Business and Massage Therapist Licenses, regulating massage therapy businesses and massage therapists in the City of Willmar, as follows:

ARTICLE X. – MASSAGE THERAPY BUSINESS AND MASSAGE THERAPIST LICENSES

DIVISION 1. – GENERALLY.

Sec. 8-321. – Purpose.

The purpose of this ordinance is to prohibit massage businesses and services to the public except those licensed as massage therapy businesses and massage therapists pursuant to this Article. The licensing regulations prescribed herein are necessary to protect the profession and reputation of legitimate massage therapy businesses, to ensure physical facilities are clean, well maintained and safe, to prevent criminal activity, and to protect the health, safety, and general welfare of the community. The purpose of this Article is not to impose restrictions or limitations on the freedom of protected speech or expression.

Sec. 8-322. – Findings of the city council.

The City Council of the City of Willmar 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 massage therapists can minimize the risk of the spread of communicable diseases and can promote overall health and sanitation.
- (c) License qualifications for the restrictions on massage therapy businesses and massage therapists can minimize the risk that such businesses and persons will facilitate prostitution and other criminal activity in the community.
- (d) 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 specialized and standardized training.
- (f) The training of professional massage therapists at accredited institutions is an important means of ensuring the fullest protection of the public health, safety, and welfare.

Sec. 8-323. – Definitions.

Unless specifically defined below, words or phrases used in this ordinance must be interpreted according to common usage and so as to give this ordinance its most reasonable application. For the purpose of this Article, certain words and terms are hereby defined as follows:

- (a) *Accredited Institution* means an educational institution holding accredited status approved by the United States Department of Education, a regional accrediting agency approved by the United States Department of Education, the Minnesota Office of Higher Education or the state agency having jurisdiction over the educational institution.
- (b) *Issuing Authority* means the City Clerk or his or her designee.
- (c) *Massage Therapist* means a person who practices or administers therapeutic massage to another for a fee or other consideration paid either directly or indirectly. A person licensed as a medical doctor, chiropractor, osteopath, podiatrist, licensed nurse, physical therapist, athletic coach, director or trainer, beautician (cosmetologist) or barber who confined his or her treatment to the scalp, face, and neck or the lower leg and feet in the case of a pedicure shall not be deemed to be a massage therapist.
- (d) *Massage Therapy or Therapeutic Massage* means scientific health care or health maintenance techniques or procedures carried out by a massage therapist involving any method of applying pressure on, or friction against, or the rubbing, stroking, kneading, tapping, pounding, vibrating, stimulating, stretching, or rolling of the external parts of the human body with the hands 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 preparation, for the purpose of easing mental and physical tension, the breaking up of fatty tissues, relaxing muscles, or alleviating muscle spasms, and the improvement of circulation through the body.
- (e) *Massage Therapy Business* means any enterprise, establishment, or operation, whether under control of an individual or legal entity, providing or offering to provide massage therapy services within the city for a fee or other consideration paid either directly or indirectly, that:
 - (1) Has one or more massage therapists, other than the owner, employed or contracted to provide massage therapy services for the massage therapy business; or
 - (2) Is located in a fixed location in a nonresidential district within the city wherein massage therapy services are provided. Any health or medical facility, office, or clinic operated by state licensed medical professional(s) or any health or medical-related business operated by state-licensed medical professionals which provides therapeutic massage services to its patients shall not be deemed to be a massage therapy business.
- (f) *Person* means any individual, firm, association, partnership, corporation, joint venture, or combination of individuals.

DIVISION 2. – LICENSES.

Sec. 8-324. – License required.

- (a) *Massage Therapist License.* It shall be unlawful for any person to practice, administer, or provide or offer to provide therapeutic massage services within the city without a license therefore issued by the city pursuant to this Article.
- (b) *Massage Therapy Business License.* It shall be unlawful for any person or entity to operate a massage therapy business within the city without first having obtained a license from the city pursuant to this Article. 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, administer or engage in massage therapy.

Sec. 8-325. – Exceptions.

This Article shall not apply to, and no massage therapist license or massage therapy business license shall be required for, any of the following:

- (a) Health care offices, clinics or facilities owned by the state or any of its agencies or political subdivisions.
- (b) Persons duly licensed or registered in this state to practice medicine, surgery, osteopath, chiropractic, physical therapy, podiatry or registered nurses provided the massage is administered in the regular course of the medical business as it prepares the patient for a medical procedure or complements a medical procedure previously performed on the patient and is not provided as part of a separate and distinct massage business.
- (c) Persons duly licensed by this State as beauty culturists or barbers, who do not give or hold themselves out as giving massages or other services, other than those customarily given in such shops and places of business for beautification only. Massages customarily given by beauty culturists will be limited to the areas of head, neck and shoulders; hand and lower arms to the elbow; foot and ankle, and for barbers, to areas of the head, neck and shoulders.
- (d) Hospitals, clinics, nursing homes, hospices, or group homes established for the hospitalization or care of human beings provided the massage is administered only to the residents or patients of the facility as part of their care and not provided as part of a separate and distinct massage business.
- (e) Persons working as employees of or solely under the direction and control of a medical professional duly licensed under Minnesota Statutes, Chapters 147-147F and 148-148F, as the same may be amended from time to time.
- (f) Persons working as employees of or solely under the direction and control of a health care office, clinic or facility owned by the state or any of its agencies or political subdivisions.
- (g) Persons working as athletic coaches, directors and trainers as employees of or solely under the direction and control of public or private schools.
- (h) Accredited institutions and students of accredited institutions which provide an accredited program of study or course work in massage therapy, provided that the massage is provided during and as a part of the course or clinical component of the institution's program or course work, the students are identified to the public as students of massage therapy, and the students are supervised by an instructor while performing the massage.

- (i) Persons providing temporary massage services, such as “chair massage” provided that all of the following requirements are met:
 - (1) The massage is provided in a place of business where the massage can easily be seen by employees and visitors.
 - (2) Massages are offered at the place of business no more than ten (10) days per calendar year;
 - (3) Each recipient of a massage remains in an upright position during the massage, either in a seated or standing position; and
 - (4) Each recipient of a massage remains fully clothed in the normal daytime attire worn when he/she enters the place of business and does not remove any clothing, except outerwear, such as a coat or jacket.

Sec. 8-326. – License application.

- (a) *Massage Therapy Business License Application.* An application for a massage therapy business license, on a form supplied by the city, shall be filed, along with all required fees, with the issuing authority, and shall include the following information:
 - (1) *All Applicants.*
 - a. Whether the applicant is an individual, corporation, partnership or other form of organization.
 - b. Full name, address, date and place of birth, and telephone number of the applicant, all owners and operators, including the designated on-site manager or agent of the applicant.
 - c. The name of the business if the business is to be operated under a name or designation other than the name of the applicant, together with a certified copy of the certificate required by Minnesota Statutes, Sections 333.01 and 333.02, as the same may be amended.
 - d. The full name, address, date and place of birth, and telephone number of the natural person, designated by the applicant as the massage therapy business’s on-site manager or agent, who shall be a resident as of the date of application of the State of Minnesota, along with the notarized consent of such person to take full responsibility for the conduct of the licensed business and serve as agent for service of notices and other process relating to such license.
 - e. The applicant shall produce at the time of filing the application the applicant’s proof of identification which may be established only by one of the following:
 - 1. A valid driver’s license or identification card issued by Minnesota, or another state, or a province of Canada, and including the photograph and date of birth of the licensed person;
 - 2. A valid military identification card issued by the United States Department of Defense;

3. A valid passport issued by the United States or, in the case of a foreign national, by another nation.

For purposes of proof of identification, the “applicant” shall mean the natural person signing the application for a massage therapy business license and, if a different person, the on-site manager or agent listed in subparagraph (a)(1)(d) of this Section.

- f. The type, name, location and dates of every business or occupation the applicant has been engaged in during the preceding ten (10) years.
- g. Whether the applicant is currently licensed in other communities to perform massage therapy or operate a massage therapy business, and if so, a list of all such communities.
- h. Whether the applicant or any individual owning at least a five percent interest therein also owns an interest, as an individual or as part of a corporation, partnership, association, establishment, business or firm, in a license from any licensing authority for a massage-related business or to provide massage-related services that was revoked, suspended or denied by such licensing authority within the ten (10) years preceding the date the license application is submitted to the issuing authority pursuant to the requirements of this Section, and if so, the name of such licensing authority and date of such revocation, suspension or denial.
- i. Whether the applicant or any individual owning at least a five percent interest therein, or the applicant’s appointed on-site manager, has ever been convicted of any crime, or violation of any ordinance other than a minor traffic offense, and if so, the time, place, date(s) and offense(s) for which convictions were had.
- j. Proof of Workers’ Compensation Insurance as required by Minnesota law and other insurance coverage as required by this Article.
- k. Such other information as the city may reasonably require.

(2) *Individuals.*

- a. Full name, address, date and place of birth, and telephone number of the applicant.
- b. Whether the applicant has ever used or been known by a name other than the applicant’s name, and if so, the name or names and information concerning dates and places where used. This includes commonly used nicknames.
- c. Whether the applicant is a citizen of the United States or has the legal authority work in the United States.
- d. Street addresses at which the applicant has lived during the preceding ten (10) years and dates at which the applicant resided at each such address.
- e. Names, addresses and date of the applicant’s and on-site manager’s or agent’s employers for the preceding ten (10) years.

- f. Whether the applicant has ever been engaged providing massage therapy services or operating a massage therapy business. If so, the applicant shall furnish information as to the name, place, dates and length of time of the involvement of all such operations.
- g. Such other information as the city may reasonably require.

(3) *Partnerships.*

- a. The full name(s), address(es), date and place of birth, and financial interest of all general partners and all of the information concerning each general partner that is required of individual applicants in subparagraph (a)(2) of this Section.
- b. The full name(s), address(es), date and place of birth and telephone number of the managing partner(s) and the interest of each managing partner in the business.
- c. A copy of the partnership agreement.
- d. Such other information as the city may reasonably require.

(4) *Corporations and Other Organizations.*

- a. The name of the corporation or organization, and if incorporated, the state of incorporation.
- b. A copy of the certificate of incorporation. If the applicant is a foreign corporation, a certificate of authority as required by Minnesota Statutes Section 303.06, as the same may be amended, shall be included.
- c. The name of the manager(s), proprietor(s) or other agents in responsible for the operations of the business and all of the information concerning each such manager, proprietor, or agent that is required of applicants in subsection (a)(2) of this Section.
- d. A list of all persons who own at least a five percent interest in the corporation or organization or who are officers of said corporation or organization, together with their addresses and all the information concerning such persons as is required of applicants in subsection (a)(2) of this Section.
- e. Such other information as the city may reasonably require.

(5) *Premises Information.*

- a. The address and legal description of the premises where the massage therapy business is to be located, if proposed to have a fixed location in which the services are provided, together with a plan of the area showing dimensions, location of buildings, street access and parking facilities.
- b. Plans and specifications showing the interior and exterior design of the establishment; including space allocation and utilization, equipment layout, room finishes, and specifications of all massage equipment.
- c. The current status of the premises and establishment, including whether they are existing, planned, or under construction/renovation.

- d. The floor number, street number, suite number(s) and rooms where the massage services are to be conducted.
 - e. Whether all real estate and personal property taxes that are due and payable for the premises where the massage therapy business will be located have been paid, and if not paid, the years and amounts that are unpaid.
 - f. Such other information as the city may reasonably require.
- (b) *Massage Therapist License Application.* An application for a massage therapist license, on a form supplied by the city, shall be filed, along with all required fees, with the issuing authority, and shall include the following information:
 - (1) The applicant's full name, current address, and telephone number.
 - (2) The applicant's current employer.
 - (3) The applicant's employers for the previous five (5) years, including the employer's name, address and dates of employment.
 - (4) The applicant's addresses for the previous five (5) years and dates at which the applicant resided at such addresses.
 - (5) The applicant's date of birth, weight, height, color of eyes and color of hair.
 - (6) Proof of identification, which may be established only by one of the following:
 - a. A valid driver's license or identification card issued by Minnesota, or another state, or a province of Canada, and including the photograph and date of birth of the licensed person;
 - b. A valid military identification card issued by the United States Department of Defense;
 - c. A valid passport issued by the United States or, in the case of a foreign national, by another nation.
 - (7) Whether the applicant is a citizen of the United States or has the legal authority work in the United States.
 - (8) Whether the applicant has ever used or been known by a name other than the applicant's name, and if so, the name or names and information concerning dates and places where used. This includes commonly used nicknames.
 - (9) Proof of insurance coverage as required by this Article.
 - (10) Whether the applicant has ever been convicted of any crime, or violation of any ordinance other than a minor traffic offense, and if so, the time, place, date(s) and offense(s) for which convictions were had.
 - (11) Whether the applicant has had an interest in, as an individual or as part of a corporation, partnership, association, establishment, business or firm, a massage license that was denied, revoked or suspended within the last ten (10) years of the date the license application is submitted to the Issuing Authority, and if so, the name of such licensing authority and date of such revocation, suspension or denial.

- (12) The names, resident and business addresses and contact information of two individuals of good moral character and not related to the applicant or financially interested in the premises of the business, who may be referred to as the applicant's character.
- (13) Whether the applicant has ever been the subject of an investigation, public or private, criminal or non-criminal, in any way related to massage therapy.
- (14) One of the following:
- a. Proof of successful completion of a minimum of 500 hours of therapeutic massage training/course work that includes subjects of anatomy, physiology, hygiene, ethics, massage theory and research, and massage practice from an accredited institution or program; or
 - b. A diploma or certificate of graduation from a comprehensive massage therapy program consisting of the course work stated in subparagraph (b)(14)(a) of this Section issued to the applicant from an accredited institution or an accredited program; or
 - c. Proof of passing the National Certification Exam offered by the National Certification Board for Therapeutic Massage and Bodywork or proof of passing the Federation of State Massage Therapy Boards (FSMTB) Massage and Bodywork Licensing Examination (MBLEx); or
 - d. Proof of having completed at least 500 hours of therapeutic massage training/course work that includes subjects of anatomy, physiology, hygiene, ethics, massage theory and research and definitions, of this Article, and has practiced massage therapy in the City of Willmar, for compensation, for at least five years immediately preceding the date of the application. This form of eligibility will be accepted until January 1, 2021.
- (15) Such other information as the city may reasonably require.
- (c) *Background Investigation.* The applicant shall submit with the completed application form an executed release of information authorizing the Chief of Police to obtain any information pertaining to the applicant's character or criminal history, which may be deemed confidential, private or privileged by the laws of the United States or of any state. The applicant will also submit additional information that may be required by the Planning Office, Health and Inspections Department, Police Chief and City Attorney. No person will make false statements in an application.
- (d) *Review and Investigation Fee.* At the time of each initial application, the applicant will pay in full a review and investigation fee. Review and investigation fees will be determined by the city council and included in the city's Fee Schedule. Where a new application is filed as a result of incorporation by an existing licensee and the ownership control and interest in the license are unchanged, no additional license fee will be required. The review and investigation fee will not be refunded.
- (e) *License Fee and License Year.* The annual license fee for the massage therapy business license and massage therapist license will be in the amount set forth in the city's Fee Schedule. A separate license will be obtained for each place of business. Licenses are valid from January 1 to December 31 in the year the license is issued, unless revoked. Renewal application for the license must be made on or before December 1, prior to the next license term.

- (f) *Administrative Review.* Upon the filing of a new application for a license under this Article, together with the documents required to accompany the license, the issuing authority will coordinate the city's review of the application by city departments as necessary to determine whether the application satisfies the requirements of this Article, the city's zoning ordinance and comprehensive plan, and all requirements of the city and State relating to health and sanitation and building safety. The issuing authority shall approve or deny the application within 45 days of receipt of the complete license application. Upon the filing of a renewal application, the city will respond within a reasonable period of time.

Sec. 8-327. – New construction and alterations of existing structures.

- (a) *Final Plans Reviewed.* Where a license to operate a massage therapy business is granted for premises on which new construction or alteration of existing structures is to occur, the applicant shall submit a set of detailed final plans showing interior and exterior design, including a site map and building layout. These plans shall be certified by a registered architect or engineer and submitted to the Building Inspections Division. The Building Inspections shall certify to the issuing authority that the final plans are or are not in conformance with the preliminary plans included in the application, and if not, whether such deviations from the preliminary plans are acceptable. The issuing authority shall then communicate either the city's approval of the final plans to the licensee or any changes to the final plans required by the Building Official.
- (b) *Certificate of Occupancy Required.* For premises on which new construction or alteration of existing structures is to occur, no license to operate a massage therapy business will be issued until a certificate of occupancy is issued by the city for such premises in accordance with the application and plans reviewed by the issuing authority. Prior to issuance of the certificate of occupancy, the Building Official shall certify to the issuing authority that construction was or was not in compliance with the final plans. Where the construction is found not to be in accordance with the final plans, the Building Official will state all significant deviations.
- (c) *Review of Deviations.* Where the certification to the issuing authority indicates that construction was not in accordance with the final plans, the issuing authority shall not issue the license, but will return the application, together with the final plans and a statement of deviations, unless all such deviations are independently approved by the city.

Sec. 8-328. –License eligibility.

- (a) *Massage Therapy Business License.* The issuing authority shall not issue a massage therapy business license to an applicant, or once issued, any such license may be revoked, under any of the following circumstances:
 - (1) The applicant, any person who owns at least a five percent financial interest in the business, the appointed on-site manager or agent, or other person responsible for the operation of the business, is not 18 years of age or older at the time the application is submitted to the issuing authority.
 - (2) The applicant, any person who owns at least a five percent financial interest in the business, the appointed on-site manager or agent, or other person responsible for the operation of the business, has been convicted of, or was charged with, but convicted of a lesser charge of a crime, or is under a stay of adjudication from a charge involving a violation of any massage therapy-related regulation, any prostitution-related offense, criminal sexual conduct, indecent exposure,

surreptitious intrusion, disorderly house as defined by Minnesota Statutes, theft, felony drug offense, any crime of violence as defined by Minnesota Statutes, or any other similar crime or offense within five years of the date of application, 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, as the same may be amended.

- (3) The applicant, any person who owns at least a five percent financial interest in the business, the appointed on-site manager or agent, or other person responsible for the operation of the business, or the spouse of any such person, has had an interest in, as an individual or as part of a corporation, partnership, association, establishment, business or firm, a massage license that was denied, revoked or suspended within the last ten (10) years preceding the date the license application is submitted to the issuing authority.
- (4) The applicant, any person who owns at least a five percent financial interest in the business, the appointed on-site manager or agent, or other person responsible for the operation of the business, is not of good moral character or repute.
- (5) The applicant failed to identify the full name, address and date and place of birth of the natural person designated by the applicant as the massage therapy business's on-site manager or agent, along with the notarized written consent of such a person to take full responsibility for the conduct of the licensed premises and operation and serve as the agent for service of notices and other process related to the license.
- (6) The appointed on-site manager or agent is not a citizen of the United States or a resident alien and is legally prohibited from working in the United States.
- (7) The appointed on-site manager or agent is not a resident of the State of Minnesota on the date the license application is submitted to the issuing authority.
- (8) The applicant provided false, misleading or misrepresented information in the application submitted to the issuing authority.
- (9) The applicant is not the real party in interest of the business.
- (10) The applicant, any person who owns at least a five percent financial interest in the business, the appointed on-site manager or agent, or other person responsible for the operation of the business, has knowingly misrepresented or falsified information on a license application within the preceding ten (10) years preceding the date of the application.
- (11) The applicant or license holder has violated any of the regulations or requirements contained in Section 8-309 or any other provisions of this Article or any other city ordinance or state or federal law or regulation directly related to the occupation or business licensed under this Article as defined by Minnesota Statutes, Section 364.03, subd. 2, as the same may be amended, including all laws or regulations relating to health and sanitation laws and building safety, or has otherwise operated a massage therapy business or performed message therapy services 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 community. The charging of a violation or conviction is not required for non-renewal, suspension or revocation of a license.

- (12) The applicant has been denied a license under this Article within the preceding twelve (12) months.
 - (13) The applicant, any person who owns at least a five percent financial interest in the business, the appointed on-site manager or agent, or other person responsible for the operation of the business, has engaged in fraud, misrepresentation or false statement made in the course of carrying on the occupation or business licensed under this Article.
 - (14) The premises of a business licensed under this Article subject to final plan review pursuant to Section 8-307 has experienced a material variation from the actual plan and design of the premises from the plans approved thereunder.
 - (15) The proposed fixed location or premises in which the massage therapy business proposes to provide massage therapy services is in conflict with the Willmar Zoning Code or the Comprehensive Plan.
 - (16) The massage therapy business is proposed to be operated on premises on which property taxes, assessments, or other financial claims by the state, county, school district, or city that are due, delinquent and unpaid, provided the applicant or other entity in which the applicant has an interest has the legal duty to pay said taxes, assessments, or claims.
- (b) *Massage Therapist Licenses.* The issuing authority shall not issue a massage therapist license to an applicant, or once issued, any such license may be revoked, under any of the following circumstances:
- (1) The applicant is not 18 years of age or older at the time the application is submitted to the issuing authority.
 - (2) The applicant has been convicted of, or was charged with, but convicted of a lesser charge of a crime, or is under a stay of adjudication from a charge involving a violation of any massage therapy-related regulation, any prostitution-related offense, criminal sexual conduct, indecent exposure, surreptitious intrusion, disorderly house as defined by Minnesota Statutes, theft, felony drug offense, any crime of violence as defined by Minnesota Statutes, or any other similar crime or offense within five years of the date of application, 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, Section 364.03, subd. 3, as the same may be amended.
 - (3) The applicant has had an interest in, individually or as part of a corporation, partnership, association, establishment, business or firm, a massage license that was denied, revoked or suspended within the ten (10) years preceding the date the license application is submitted to the issuing authority.
 - (4) The applicant is not a citizen of the United States or a resident alien, and is legally prohibited from working in the United States.
 - (5) The applicant is not of good moral character or repute.
 - (6) The applicant provided false, misleading or misrepresented information on the application.

- (7) The applicant has knowingly misrepresented or falsified information on a license application within the preceding ten (10) years.
- (8) The applicant has violated any of the regulations or requirements contained in Section 8-309 or any other provisions of this Article or any other city ordinance or state or federal law or regulation directly related to the occupation or business licensed under this Article as defined by Minnesota Statutes, Section 364.03, subd. 2, as the same may be amended, including all laws or regulations relating to health and sanitation laws and building safety, or has otherwise performed message therapy services 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 community. The charging of a violation or conviction is not required for non-renewal, suspension or revocation of a license.
- (9) The applicant is not affiliated with, employed by, or does not own an interest in a massage therapy business licensed by the city.
- (10) The applicant has not earned or did not provide:
 - a. Proof of successful completion of a minimum of 500 hours of therapeutic massage training/course work that includes subjects of anatomy, physiology, hygiene, ethics, massage theory and research, and massage practice from an accredited institution or program; or
 - b. A diploma or certificate of graduation from a comprehensive massage therapy program consisting of the course work stated above in subparagraph (b)(10) of this Section issued to the applicant from an accredited institution or an accredited program; or
 - c. Proof of passing the National Certification Exam offered by the National Certification Board for Therapeutic Massage and Bodywork or proof of passing the Federation of State Massage Therapy Boards (FSMTB) Massage and Bodywork Licensing Examination (MBLEx); or
 - d. Proof of having completed at least 100 hours of therapeutic massage training/course work that includes subjects of anatomy, physiology, hygiene, ethics, massage theory and research and definitions, of this Article, and has practiced massage therapy in the city, for compensation, for at least five years immediately preceding the date of the application. This form of eligibility will be accepted until January 31, 2023.
- (11) The applicant has been denied a license under this Article within the preceding twelve (12) months.

DIVISION 3. – REGULATIONS.

Sec. 8-329. –Restrictions and regulations.

- (a) When performing a massage, the massage therapist must require that the person who is receiving the massage have their breasts, buttocks, intergluteal cleft (buttocks crease), anus and genitals covered with clothing or a non-transparent material at all times. The massage therapist must have his or her breasts, buttocks, anus and genitals covered with clothing at all times.

- (b) A massage therapist must not intentionally touch or offer to touch the penis, scrotum, mons veneris, vulva, or vaginal area of a person.
- (c) Each license will be issued to the applicant only, and if issued for a fixed location or premises, only for such location or premises as identified on the license. No license may be transferred to another person or place. Massage therapy business licenses shall terminate upon any change in officers or ownership interests of the licensee, unless the change is approved by the council in which case the license shall only continue in force until the end of the license term.
- (d) Only massage therapists who are licensed by the city shall practice or provide therapeutic massage services for licensed massage therapy businesses or within licensed massage therapy business premises as identified in the license.
- (e) Each massage therapy business shall maintain in effect during the license period general liability insurance providing minimum coverage of \$1,000,000 combined single limit per occurrence. Each massage therapist shall maintain in effect during the license period professional liability insurance for the practice of massage providing minimum coverage of \$1,000,000. The licensee shall keep a current certificate documenting such insurance policies on file with the issuing authority at all times during the license period, which certificate(s) must state that no cancellation of such policy may be effective except upon 30 days' written notice to the city. Failure to maintain current documentation of the insurance policies required herein is grounds for immediate suspension and/or revocation of the license.
- (f) If a licensed massage therapy business's on-site manager or agent ceases to be located at the licensed premises or ceases to act in such capacity, the licensee shall appoint a successor and promptly inform the issuing authority of such appointment and submit the documentation required in Section 8-306(a)(1)(d) for such successor.
- (g) No customers or patrons will be allowed to enter the licensed premises after 9:00 p.m. and before 6:00 a.m. daily. Customers or patrons will not be allowed to remain upon the licensed premises after 9:30 p.m. and before 6:00 a.m. daily.
- (h) All massage therapy businesses shall post their rates for service in a prominent place in the entrance or lobby of the business.
- (i) Current massage license issued by the City of Willmar must be displayed in the front entry or corridor of the facility.
- (j) Credentials of all massage therapists must be maintained and available on any site where massage therapy services are performed.
- (k) All massage therapy businesses shall maintain with the issuing authority a current list of all employees of such licensed premises which includes all massage therapists licensed under this Article.
- (l) All places where massage therapy services are performed shall provide single-service disposable paper or clean linens to cover the table, chair, furniture, or area on which the patron receives the massage.
- (m) The massage therapist must wash his/her hands and arms with water and soap, antibacterial scrubs, alcohol or other disinfectants prior to and following each massage service performed.

- (n) Massage tables, chairs and other furniture on which massages are performed, must have surfaces that can be readily laundered and / or disinfected after each massage. These surfaces must be disinfected or changed following each massage performed. All modalities shall be performed on a raised massage therapy table, chair or massage therapy technique specific device.
- (o) Rooms must be adequately illuminated to allow for adequate cleaning purposes.
- (p) All places where massage therapy services are performed shall be maintained in good repair and in a sanitary condition and must take reasonable steps to prevent the spread of infections and communicable diseases on the premises.
- (q) Massage therapists must be in good health, without skin infections, and wear clean clothing when performing massage services.
- (r) Massage therapy businesses shall not contain, nor allow the use by any person, sleeping quarters or living spaces of any kind intended for habitation, including, but not limited to beds, cots or mattresses. Sleeping or living quarters must be physically separated from all places where massage therapy services are performed.
- (s) All massage therapy services must be performed within a building with a valid certificate of occupancy and not in or upon any vacant lot, lot, motor vehicle, trailer, tent or railroad car, including but not limited to structures not meant for human habitation.
- (t) Toilet rooms for employees and patrons are adequate and conveniently located.
- (u) All massage therapy services 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 technique specific mat for therapists specifically trained in those techniques. No modality may be performed that requires a massage therapist to stand on the massage therapy table or chair unless necessary due to size ratio of massage therapist/client.
- (v) 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. One-room office/therapy studios may be exempted from this provision upon written application; however, such doors must be capable of being opened from the therapy area without the use of a key.
- (w) Massage therapy businesses shall not contain nor allow the use by any person of sleeping quarters or living spaces of any kind intended for habitation, including but not limited to beds, cots, or mattresses. Home-based enterprises shall not contain nor allow the use by any person of sleeping quarters or living spaces of any kind intended for habitation, including but not limited to beds, cots, or mattresses in any area where massage therapy services are performed.
- (x) No beer, liquor, narcotic drug, or controlled substance, as such terms are defined by Minnesota Statutes or the City Code, other than drugs which may be purchased over the counter, without a prescription, or those for which the individual has a prescription, shall be used or ingested or be present during any massage therapy session.

Sec. 8-330. – Inspection by city officers and identification of employees.

Premises under which massage therapy services are being delivered, including licensed premises under a licensed massage therapy business, if any, shall be open to unannounced inspection by any

public health, building, zoning, code or police officer during business hours to determine whether such business and premises are in compliance with this Article. All persons, as a condition to being issued a license under this Article, consent to such inspection by such officers. It is unlawful for any licensee or agent or employee of a licensee to hinder or prevent a city inspecting officer from making such inspection. Any person engaged in providing services in any licensed premises will identify themselves giving their true legal name and correct address upon demand by any police officer.

Sec. 8-331. – Advertising.

Any advertising by a licensee or representative of the licensee of any potential unlawful, misleading, sexually explicit, obscene or erotic conduct at the licensed business or premises shall be prohibited.

Sec. 8-332. – Responsible for conduct.

A licensee under this Article shall be responsible for all acts and conduct attributable to and in connection with massage therapy services provided by the licensee or occurring on the premises of the massage therapy business. The act of any employee or agent of the licensee shall be deemed to be the act of the licensee.

Sec. 8-333. – Non-renewal, suspension or revocation of license.

Suspension, revocation, or non-renewal of any license issues pursuant to this Article shall be administered pursuant to Article X of this Chapter. In the event of multiple massage therapy business locations, any license suspension or revocation shall apply to all such locations within the city.

Sec. 8-334. – Immediate suspension of license.

Notwithstanding anything to the contrary in this Chapter, the issuing authority or his or her designee may immediately suspend a license, if the licensee, or any person working on behalf of the licensee, is determined to be conducting business in an unlawful manner, any manner that constitutes a substantial hazard to the health, safety or general welfare of the public, or after repeated complaints received regarding unlawful conduct of the business practices or method of solicitation. The licensee will be given notice of the immediate suspension on site. The suspension will take place immediately. The licensee may request a hearing before the city council to review such suspension pursuant to Section 8-352.

Sec. 8-335. – Ability to reapply after revocation.

The holder of a massage therapy business license or massage therapist license may not reapply for a new license for a period of ten (10) years following revocation of such license under this Article.

Sec. 8-336. – Severability.

If any section, subsection, sentence, clause, or phrase of this Article is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Article. The city council hereby declares that it would have adopted the section in each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Secs. 8-337.—8-350. – Reserved.

Section 2. EFFECTIVE DATE. This ordinance shall be effective from and after August 12, 2023.

Passed by the City Council of the City of Willmar this 7th day of August, 2023.

ATTEST:

/s/ Judy R. Thompson
Judy R. Thompson, City Clerk

/s/ Douglas E. Reese
Douglas E. Reese, Mayor

VOTE: X SHULDES X O'BRIEN X DAVIS X ASMUS
 X FAGERLIE X ASK X BUTTERFIELD X NELSEN

This Ordinance introduced by Council Member: Asmus

This Ordinance introduced on: July 17, 2023

This Ordinance published on: July 22, 2023

This Ordinance given a hearing on: August 7, 2023

This Ordinance adopted on: August 7, 2023

This Ordinance published on: August 12, 2023

SUMMARY PUBLICATION OF CITY OF WILLMAR ORDINANCE NO. 1507

AN ORDINANCE AMENDING WILLMAR MUNICIPAL CODE, CHAPTER 8, LICENSES, PERMITS AND BUSINESS REGULATIONS

Summary: Ordinance No. 1507 makes several amendments in Chapter 8 of the Willmar Municipal Code, regulating Massage Therapy Businesses and Massage Therapists by amending sections of the Municipal Code. The purpose of this ordinance is to prohibit massage businesses and services to the public except those licensed as massage therapy businesses and massage therapists pursuant to this Article. The licensing regulations prescribed herein are necessary to protect the profession and reputation of legitimate massage therapy businesses, to ensure physical facilities are clean, well maintained and safe, to prevent criminal activity, and to protect the health, safety, and general welfare of the community. The purpose of this Article is not to impose restrictions or limitations on the freedom of protected speech or expression.

The complete text of Ordinance No. 1507 may be obtained at no charge at City Hall (333 6th Street Southwest, Willmar, MN 56201), or from the City's website at www.willmarmn.gov.