

ORDINANCE NO. 22-02

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES FOR THE CITY OF DENHAM SPRINGS, CHAPTER 26 BY ADDING ARTICLE VIII SECTIONS 26-160 THROUGH 26-169, RELATIVE TO MASSAGE ESTABLISHMENTS

BE IT ORDAINED by the Mayor and City Council of the City of Denham Springs, Louisiana, in regular public session convened that:

Sections 26-160 through 26-169 be added as follows:

Section 26-160 Massage Establishments

Sec. 26-160 Definitions

The words, terms, and phrases, when used in this article, shall have the following meaning:

- (a) Business. Includes, but is not limited to, everything about which a person can be employed, and means that which occupies the time, attention, and labor of men and women for the purpose of producing a livelihood or profit, and connotes the efforts of men and women varied and diverse methods of dealing with each other, to improve their individual economic conditions, and for the purposes of this chapter shall include, but are not limited to, the advertising solicitation, and/or performance of massages. The term “business” includes, but is not limited to, a massage practitioner who is the sole owner, operator, and employee of a massage business operating as a sole proprietorship, as well as a massage establishment that employs massage practitioners and therapists;
- (b) Board. Board shall be defined as the Louisiana Board of Massage Therapy or any other board or entity established by the State of Louisiana to govern the practice of massage therapy.
- (c) Business License. The Business License is the license issued by the Business License Office of the City of Denham Springs, also known as an occupational license.
- (d) Business License Office. The Business License Offices is the Business License Office of the City of Denham Springs.
- (e) Client. Client shall be defined a customer or patron who pays for or receives massage services or any other service offered by the massage establishment.
- (f) Compensation. Compensation includes, but is not limited to, the payment, loan, advance, donation, contribution, deposit, exchange, or gift of money or anything of value.
- (g) Employee. Any person employed by a massage business who may render any service to the business, and who receives any form of compensation from the business or its owner or other employee.
Licensed Massage Practitioner. A licensed massage practitioner shall be defined as a person licensed to practice massage by the Louisiana Board of Massage Therapy. (h)
- (i) Lobby. The area of the building in which registration of clients occurs, including, but not limited to, the area immediately inside the front door of the massage business dedicated to the reception and waiting of patrons of the massage business and visitors.
- (j) Massage and Massage Therapy. Any method of treating the external parts of the body for remedial, health or hygienic purposes for any form of compensation by means of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, or stimulating the external parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances; with or without supplementary aids, such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations commonly used in this practice; or by baths, including, but not limited to Turkish, Russian, Swedish, Japanese, vapor, shower, electric tub, sponge, mineral, fomentation, or any other type of bath, or reflexology.
- (k) Massage Business, Establishment, or Parlor. Used interchangeably, referring to any business that offers massage therapy in exchange for compensation, whether at a fixed place of business or at a location designated by the customer or client through outcall massage services. Any business that offers any combination of massage therapy and bath facilities including, but not limited to, showers, baths, wet and dry heat rooms, pools and hot tubs, shall be deemed a massage business under this chapter. The term massage

business includes but is not limited to a licensed massage practitioner who is the sole owner, operator, and employee of a massage business operating as a sole proprietorship.

- (l) Outcall. A massage scheduled and performed by a licensed massage therapist at any location other than the massage establishment.
- (m) Outer Garments. Outer garments means garments worn over other garments, and does not include underwear, bras, lingerie or swimsuits.
- (n) Owner, Proprietor, Operator, or Massage Business Owner. Used interchangeably, any of the following persons:
 - 1. Any person who is a general partner of a general or limited partnership that owns a massage business;
 - 2. Any person who has a five percent or greater ownership interest in a corporation that owns a massage business;
 - 3. Any person who is a member of a limited liability company that owns a massage business;
 - 4. Any person who has a five percent or greater ownership interest in any other type of business association that owns a massage business.
- (o) Person. Any individual, firm, association, partnership, corporation, joint venture, limited liability company, or combination of individuals, or any juridical entity.
- (p) Practitioner, Massage Practitioner or Licensed Massage Therapist. Used interchangeably, any person who administers massage to another person, for any form of consideration (whether for the massage, as part of other services, or a product, or otherwise.)
- (q) Sexually Oriented Business. A sexually oriented business shall be defined as a sex parlor, massage parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult model, or other commercial enterprise which has as its primary business the offering of a service or the sale, rent, or exhibit of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer.
- (r) Solicit. To request, ask, demand or otherwise arrange for the provision of services.
- (s)
- (t)
- (u)
- (v)

Sec. 26-161 Occupational License Required

- (a) It shall be unlawful for any massage to transact any phase of business in the city without first applying to the business license department for an occupational license. Every person, whether natural or juridical, who desires to lease or buy private property to conduct any of the businesses or callings hereinafter set forth, shall first apply for and be granted an occupational license on the forms provided by the City after providing all required documentation.
- (b) Occupational License taxes and fees shall be charged in accordance with La. R.S. 47:341 et. seq.
- (c) No business license shall be issued until all requisite approvals and permits by the Louisiana State Board of Massage Therapy, Department of Health and Hospitals, Louisiana State Fire Marshall, and all other state-required approvals and permits are finalized and received by the business license department.
- (d) All licensees shall comply with the applicable laws and regulations of the State of Louisiana and the Code of the City of Denham Springs.
- (e) Licenses shall be issued on an annual basis and shall expire December 31 of every year.
- (f) Business licenses and all requisite approvals shall be conspicuously displayed and affixed to the wall of the lobby of the massage establishment in a manner clearly visible to patrons within the lobby at all times during operation of the business.
- (g) Massage establishment proprietors shall provide the Business License Department with the dates and hours of operation for the business. Massage establishments proprietors must notify the business license office of any changes to their dates or hours of operation before the changed hours take effect.
- (h) Obtaining a massage establishment license shall be the responsibility of the entity which controls the physical location where the services are provided, which entity may be a sole proprietor, lessee, owner, partnership, corporation, cooperative, association or other legal entity.
- (i) Business owners or proprietors must sign a statement that all of the information contained in their Occupational License Application is true and correct; that all owners shall be responsible for the conduct of the business's employees or independent contractors

providing massage services; and acknowledging that failure to comply with the requirements of this Ordinance and local, state or federal law, may result in the revocation of the business's occupational license.

- (j) Name or location changes to any license shall be submitted to the business license office within thirty days of the change along with any appropriate fees.
- (k) A massage establishment shall apply to the City's Business License Department to amend its registration certificate within 30 days after any change in the registration information, including, but not limited to, the hiring and termination of certified massage practitioners, a change in the business's address, or changes in the owner's addresses and/or telephone numbers.
- (l) Nothing herein relieves an individual or business from obtaining any other licenses, conditional use permits, or other permit if otherwise required by law.
- (m) All licenses issued by the City of Denham Springs are nontransferable and shall be for the sole use and benefit the licensee or location issued.
- (n) All occupational licenses are the property of the City of Denham Springs and shall be surrendered upon demand of the City.
- (o) The requirements set forth in this Section shall not apply to persons exempt by La. R.S. 37:3556.
- (p)

Section 26-162 Rules and Regulations for Massage Establishment Proprietors and Massage Therapists

In addition to all other applicable state and local laws and ordinances pertaining to licenses and franchises, all massage establishments operating pursuant to this division shall also be subject to the following provisions:

- (a) No person shall engage in the practice of massage therapy without a current license issued pursuant to La. R.S. 37:3556 unless such a person is exempt under the laws of the State of Louisiana.
- (b) Each person engaging in the practice of massage therapy shall be the holder of a Licensed Massage Therapist Identification Card (LMT-ID Card), which shall identify the therapist as being properly licensed and shall authorize the therapist to provide off-site massage services.
- (c) A massage establishment shall employ or contract only licensed massage therapists to perform massage therapy.
- (d) Each licensed massage therapist who works at a massage establishment shall display his LMT-ID Card in plain view in an appropriate public manner. A licensed massage therapist who is working outside of a massage establishment shall have in his possession his LMT-ID card and shall present it for review upon request of a client or board representative.
- (e) Each individual performing massage therapy and the business proprietor must submit to a background check. A business license will not be granted if any individual performing massage therapy has, within the five years preceding the date of the application, been convicted of a nonviolent felony. A business license will not be granted if any individual, at any time, performing massage therapy has been convicted of or pled nolo contendere to a violent felony or criminal offense involving sexual misconduct. The background check must include the individual's business, occupation, and employment history, the inclusive dates of that employment history, the name and address of any massage business or similar business owned and operated by the individual, whether inside or outside the limits of the City of Denham Springs.
- (f) All individuals performing massage therapy must present a valid Louisiana Drivers' License and/or identification issued by a state or federal government agency, or other photographic identification bearing a bona fide seal by a foreign government, to be photocopied and attached to their application.
- (g) Each individual performing massage therapy and the business proprietor must present a recent photograph to be attached to their massage therapy license and kept on file in the business licensing office.
- (h) A massage practitioner shall operate only under the name specified in his or her license issued by the Board of Massage Therapy. A massage business shall operate only under the name specified in its Occupational License.
- (i) All massage business operators and their employees, including massage practitioners, shall wear clean, non-transparent outer garments. These garments shall not expose their

genitals, pubic areas, buttocks, or chest, and shall not be worn in such manner as to expose the genitals, pubic areas, buttocks, or chest.

- (j) No massage shall be given unless the client's genitals are, at all times, fully covered. A massage practitioner shall not, at any time during the course of business, make physical contact with the genitals or private parts of any other person, regardless whether the contact is over or under the person's clothing.

Section 26-163 Massage establishments.

- (a) All massage establishments must obtain and display occupational licenses and the licenses of each massage therapist employed thereby in the lobby of the massage establishment in a manner clearly visible to patrons within the lobby at all times during operation of the business.
- (b) Quiet and good order shall be maintained upon the premises and shall not permit disorderly or immoral conduct or loitering thereon, nor shall he cause or permit any noise or nuisance on the parking area of the establishment whereby the quiet and good order of the neighborhood are disturbed.
- (c) A list of the services available and the cost of such services shall be posted in the reception area of the massage establishment, and shall be described in readily understandable language. Outcall service providers shall provide such a list to clients in advance of performing any service. No owner, manager, operator or responsible managing employee shall permit, and no massage practitioner shall offer or perform, any service other than those posted or listed as required herein, nor shall any operator or massage practitioner request or charge a fee for any service other than those listed therein.
- (d) For each massage service provided, every massage business shall keep a complete and legible written record of the following information: the date and hour that service was provided; the service received; the name or initials of the employee entering the information; the name of the client; and the name of the massage practitioner administering the service. Such records shall be open to inspection and copying by police officers, or used by any massage practitioner or operator for any purpose other than as records of service provided, and may not be provided to other parties by the massage practitioner or operator unless otherwise required by law. Such records shall be retained on the premises of the massage business for a period of two years and shall be immediately available for inspection during business hours.
- (e) Massage businesses shall at all times be equipped with an adequate supply of clean sanitary towels, coverings and linens. Clean towels, coverings, and linens shall be stored in a sanitary location. Towels and linens shall not be used on more than one client, unless they have first been laundered and disinfected. Disposable towels and coverings shall not be used on more than one client. Soiled linens and paper towels shall be deposited in separate, approved receptacles.
- (f) Wet and dry heat rooms, steam or vapor rooms or cabinets, toilet rooms, shower and bath rooms, tanning booths, whirlpool baths and pools shall be thoroughly cleaned and disinfected as needed, and at least once each day the premises are open. Bathtubs shall be thoroughly cleaned after each use with a disinfectant. All walls, ceilings, floors, and other physical facilities for the business must be in good repair, and maintained in a clean and sanitary condition.
- (g) Instruments utilized in performing massage shall not be used on more than one client unless they have been sterilized, using approved sterilization methods.
- (h) No person shall enter, be, or remain in any part of a massage business while in possession of an open container of alcohol, or consuming or using any alcoholic beverage or drugs except pursuant to a prescription for such drugs, except as allowed by the Louisiana Office of Alcohol and Tobacco Control and the City of Denham Springs. The owner, operator, responsible managing employee, or manager shall not permit any such person to enter or remain upon such premises except as permitted by the Office of Alcohol and Tobacco Control and the City of Denham Springs.
- (i) No massage business shall place, publish or distribute, or cause to be placed, published or distributed, whether by manual, physical, or electronic means, any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective clients that any service is available other than those services listed as an available service pursuant to the foregoing, nor shall any massage business employ language in the text of such advertising that would reasonably suggest to a prospective client that any service is available other than those services as described in compliance with the provisions of this chapter.

All signs shall be in conformance with current city ordinances.

- (j) Minimum lighting, consisting of at least one artificial light of not less than 40 watts or the equivalent, shall be provided, and shall be operating in each room or enclosure where massage services are being performed on clients, and in all areas where clients are present.
- (k) Ventilation shall be provided in accordance with applicable building codes and regulations.
- (l) Hot and cold running water shall be provided at all times.
- (m) Adequate dressing, locker and toilet facilities shall be provided for clients.
- (n) A minimum of one wash basin for employees shall be provided at all times. The basin shall be located within or as close as practicable to the area devoted to performing of massage services. Sanitary towels shall also be provided at each basin.
- (o) All massage businesses shall comply with all state and federal laws and regulations for handicapped clients.
- (p) No massage business shall allow any person to reside within the massage business or in attached structures owned, leased or controlled by the massage business.
- (q) No massage establishment shall provide massages after 10:00 p.m. or before 7:00 a.m.

Section 26-164 Inspection by Officials.

- (a) The investigating and enforcing officials of the city, including, but not limited to, the police, Building Official, issuer of Occupational Licenses, or their designees, shall have the right to enter the premises at any time during regular business hours for the purpose of making reasonable inspections and to observe and enforce compliance with building, fire, electrical, plumbing, or health regulations, and to enforce compliance with the applicable regulations, laws, and statutes, and with the provisions of this chapter. The massage business may be charged a fee for any safety inspections.

Section 26-165 Grounds for Revocation of Occupational License

- (a) The City may suspend, revoke, or refuse to issue or renew an occupational license after notice and opportunity for hearing, upon proof of any of the following:
 - 1. Obtaining a license by means of fraud; misrepresentation, or concealment of material facts, including making false statements on an application or other document required by the City;
 - 2. Selling, bartering, or offering to sell or barter a license;
 - 3. Engaging in unprofessional conduct that has endangered or that is likely to endanger the health, welfare, or safety of the public;
 - 4. The conviction, nolo contendere plea, or receipt of deferred adjudication of any person employed by the massage establishment of any crime arising out of or connected with the practice of massage therapy, unless such a conviction was reversed on appeal;
 - 5. The conviction, nolo contendere plea, or receipt of deferred adjudication of any person employed by the massage establishment at the time of commission of the crime to a violent felony or criminal offense involving sexual misconduct or prostitution;
 - 6. Violating or aiding and abetting in the violation of any provisions of this Chapter or the rules and regulations promulgated hereunder;
 - 7. Failing to comply with license or renewal requirements from the City of Denham Springs, the State of Louisiana, or the Louisiana Board of Massage Therapy.
 - 8. The determination by the business license office or Board of Massage Therapy that the establishment is a sexually oriented business or that a crime or offense involving prostitution or other sexual offenses and resulting in a conviction, to which a plea of nolo contendere was entered or deferred adjudication received, has occurred on the premises of the establishment since the date of the most recent license renewal.
- (b) The City shall impose a fine or penalty on massage establishments and massage therapists who continue to operate without a proper occupational license at the rate set forth by the Board of Massage Therapy.
- (c) A suspension or revocation issued pursuant to this Chapter will be effective ten days from the date appearing in the order, unless a timely appeal is filed with the City Council.
- (d)
- (e) Appeals must be in writing and hand-delivered to the City Clerk. An appeal must be received by the City Clerk during business hours, inclusive of weekends and holidays, on

or before the effective date of suspension or revocation provided in the Notice of Suspension or Revocation.

- (f) The filing of a timely appeal will stay a suspension or revocation pending a decision on the appeal by the City Council.
- (g) A hearing shall be scheduled before the City Council within thirty days of the appeal. Either the appellant or the Business License Office may request, in writing directed to the City Council, a continuance of the hearing. Such requests must be supported by good cause. The decision whether to grant a continuance is at the discretion of the City Council, which shall consider whether granting the continuance poses a threat to public health and safety in light of the severity of the violations alleged.
- (h) The decision of the City Council shall be final, with no further administrative right of appeal or reconsideration. The City Council may sustain a suspension or revocation, overrule a suspension or revocation, reduce the revocation to a suspension, and/or reduce the length of a suspension. Further, the City Council may stay the effective date of any suspension for a reasonable time following a hearing.
- (i) No re-application for an Occupational License shall be accepted within one year after a certificate is revoked.
- (j) The following rules shall apply to any hearing required by this section. All parties involved shall have the right to offer testimonial, documentary, and tangible evidence bearing on the issues, to be represented by counsel, and to confront and cross-examine witnesses. Any relevant evidence may be admitted if it is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Formal rules of evidence and discovery do not apply to proceedings governed by this chapter. Unless otherwise specifically prohibited by law, the burden of proof is on the registrant in any hearing or other matter under this chapter.

Section 26-166 Public Nuisance

- (a) It shall be unlawful and a public nuisance for a massage business to be operated, conducted, or maintained contrary to the provisions of this chapter. The city may exercise its discretion, in addition to or in lieu of prosecuting a criminal action, to commence proceedings for the abatement, removal, and enjoinder of that business in any manner provided by law.

Section 26-167 Exemptions

- (a) The provisions of this chapter shall not apply to the following classes of individuals or businesses while engaged in the performance of their duties.
 - (1) Physicians, surgeons, chiropractors, osteopaths, nurses or any physical therapists who are duly licensed to practice their respective professions in the State of Louisiana, and persons working directly under the supervision of or at the direction of such licensed persons, working at the same location as the licensed person, and administering massage services subject to review or oversight by the licensed person.
 - (2) Barbers and cosmetologists, duly licensed under the laws of the State of Louisiana, while engaging in practices within the scope of their licenses, except that this provision shall apply solely to the massaging of the neck, face and/or scalp, hands or feet of their clients.
 - (3) Hospitals, nursing homes, mental health facilities, or any other health facilities duly licensed by the State of Louisiana, and employees of these licensed institutions, while acting within the scope of their employment.
 - (4) Accredited high schools, junior colleges, and colleges or universities whose coaches and trainers are trained in therapeutic sports massage, acting within the scope of their employment, performing massages for athletic purposes.
 - (5) Trainers of amateur, semi-professional or professional athletes or athletic teams who are trained in therapeutic sports massage, while engaging in their training responsibilities for and with athletes; and trainers working in conjunction with a specific athletic event.
 - (6) Individuals administering massages or health treatment involving massage to persons participating in single-occurrence athletic, recreational or festival events, such as health fairs, road races, track meets, triathlons and other similar events; provided, that all of the following conditions are satisfied:
 - (a) The massage services are made equally available to all participants in the event;

- (b) The event is open to participation by the general public or a significant segment of the public, such as employees of sponsoring or participating corporations;
- (c) The massage services are provided at the site of the event, either during, immediately preceding or immediately following the event;
- (d) The sponsors of the event have been advised of and have approved the provisions of massage services;
- (e) The persons providing the massage services are not the primary sponsors of the event.

Section 26-168 Penalties

- (a) Violations of the provisions of this Chapter shall be considered a misdemeanor an any person, including the owner or operator of a massage establishment, upon conviction, shall be fined not less than one hundred nor more than the maximum amount allowed by state law or imprisoned for not more than sixty days, or both.
- (b) Any person, proprietor, or establishment convicted of a violation of any provision of this Chapter shall additionally be ineligible for licensure as a massage therapist or massage establishment for a period of up to five years from the date of conviction.

Said Ordinance having been introduced on the 28th day of February, 2022 by Lamm-Williams, seconded by Poole, notice of Public Hearing having been published on the 10th day of March, 2022, said Public Hearing having been held, title having been read and Ordinance considered, on motion by Dugas, seconded by Poole to adopt the Ordinance, a record vote was taken and the following result was had:

YEAS:	Dugas, Lamm-Williams, Poole, Smith, Wesley
NAYS:	None
ABSENT:	None
ABSTAIN:	None

WHEREUPON, the Mayor declared the above Ordinance duly adopted on the 28th day of March, 2022.

GERARD LANDRY, MAYOR

JOAN LEBLANC, CITY CLERK