

CHARTER TOWNSHIP OF SHELBY
MACOMB COUNTY, MICHIGAN

ORDINANCE NO. 297

AN ORDINANCE AMENDING CHAPTER 14, ARTICLE 6 OF THE CHARTER TOWNSHIP OF SHELBY, MICHIGAN CODE OF ORDINANCES TO REVISE THE REGULATIONS AND REINSTITUTE THE LICENSING OF MASSAGE ESTABLISHMENTS AND SPAS WITHIN THE TOWNSHIP, PROVIDING FOR REPEALER, SEVERABILITY, PENALTIES AND EFFECTIVE DATE.

THE CHARTER TOWNSHIP OF SHELBY HEREBY ORDAINS:

Section 1. Chapter 14, Article 6, Sections 6-3 of the Charter Township of Shelby Code of Ordinances is hereby deleted in its entirety and hereby amended to read as follows:

DIVISION 1. - IN GENERAL

Chapter 14, Article 6 of the Charter Township of Shelby Code of Ordinances may be known and may be cited as the Charter Township of Shelby "Massage Establishment and Spa Licensing and Regulation Ordinance."

Purpose and findings.

It is the purpose of this chapter to regulate the operation of massage and spa establishments, massage schools, and other similar businesses offering massage therapy services; and to regulate employees of such establishments who are not licensed as massage therapists by the state, as an exercise of the township's police power in order to protect the health, safety and general welfare of the citizens of the township and the personal safety of massage therapists. The licensing requirements are designed to help prevent illegal massage, prostitution, and related sex crimes, without hindering legitimate massage establishments and their massage therapists. Such establishments that offer massage services as a subterfuge for prostitution, masturbation for hire, and other paid sexual contact are harmful to the public health, safety, and welfare as well as to the detriment of the operations of legitimate licensed business establishments and licensed massage therapists.

The Township Board further recognizes that human trafficking is a significant problem in the United States, that it can involve the use of massage establishments activities as a front where victims are forced into involuntary servitude, deceived into debt bondage and forced against their will to perform sex acts. The Federal government has passed the Trafficking Victims Protection Act of 2000 and statistics have been accumulated by the United States Department of State as well as the United States Department of

Justice and independent researchers and analysts. Human trafficking is ranked behind only drugs and arms trafficking as profitable criminal activity. It is estimated that more than eighty percent of trafficking victims are female and eighty percent of trafficking involves sexual exploitation. Physical injury and disease are other consequences of trafficking exploitation. Substantial portions of persons who are subject to trafficking are under the age of eighteen. Numerous studies exist outlining the various aspects of human trafficking including trafficking within the United States warranting the adoption of ordinance provisions in order to assist in detecting possible human trafficking.

Finally, the Michigan Legislature declared that the practice of massage therapy is an activity affecting the public interest and involving the health, safety, and welfare of the public. MCL 333.17951 et seq. was enacted to prohibit a person from engaging in the practice of massage therapy or using certain titles without being licensed under the Public Health Code; to create the Michigan Board of Massage Therapy; to establish minimum educational and experience standards for licensure; and to require continuing education courses as a condition for license renewal. The acquisition of a massage establishment license is a privilege, not a right. The enactment and enforcement of this chapter relates to municipal concerns and is a valid exercise of the township's police powers.

Sec. 14-391. - Definitions.

The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them:

- (1) *Authorized township official* includes, but is not limited to, the police chief, the fire chief, the building director, or their designees. This also includes police officers and township personnel described in chapter 1 of the Code, excluding a Macomb County Animal Control Officer.
- (2) *Employee* means any person who renders any service in connection with the operation of a massage establishment, massage school, spa or other similar business and receives consideration from the operator of the massage establishment or its patrons. Employees includes independent contractor, agent, apprentice, trainee, leased personnel and/or other similar relationships. This does not include a person who is exclusively on the premises for repair or maintenance of the premise, delivery of goods to the premise or other similar relationships.
- (3) *Massage* means the manipulation and/or treatment of soft tissues of the body, including but not limited to, pressure, range of motion stretches, rubbing, kneading, tapping, pounding, compression, vibration, stroking, application of friction, or percussion of the human body or parts of it by hand or with an instrument, apparatus (mechanical or electrical), with or without aids such as water, rubbing alcohol, liniments, antiseptics, oils, creams, lotions, ointments,

lubricants, salt glow/scrubs, body wraps, or other similar preparations commonly used in the practice of massage therapy.

- (4) *Massage therapist* means an individual engaged in the practice of massage therapy and licensed by the State of Michigan per MCL 333.17957 and 333.17959..
- (5) *Massage establishment* means a commercial establishment where any person offers or provides massage. It includes, but is not limited to, massage schools, massage parlors, health and fitness spas, spas, salons, sauna baths, Turkish bathhouses, and steam baths.
- (6) Not included. This term shall not include:
 - (a) A regularly licensed hospital, medical clinic, nursing home, other professional health care establishments separately licensed as such by the state; other licensed facilities such as barber shops, or any other medical facility where massages are provided as an incidental or accessory use to the main use of the premises.
 - (b) Transient workplace locations during normal business hours where the massage is performed upon employees pursuant to a policy of medical insurance or as a benefit provided by the employer as part of a workplace health program.
 - (c) Kiosks or similar areas at locations open to the public where all massage therapy services are performed in public
 - (d) An organization operating a community center, swimming pool, tennis court, or other educational, cultural, recreational, and athletic facilities for the welfare of the residents.
 - (e) Exempt locations do not waive the massage therapist's duty to obtain a license as required by state law.
- (7) *Owner* means a person who conducts or owns a massage establishment, massage school, or other similar business.
- (8) *Patron* means any individual or customer who receives a massage at a massage establishment, massage school, or other similar establishment (excluding physical therapy or chiropractic services at the offices of a licensed health care professional) under such circumstances that is reasonably expected that he or she will pay money or give any other consideration.
- (9) *Person* means an individual, partnership, corporation, or other entity.

- (10) *Practice of massage therapy* means the application of a system of structured touch, pressure, movement, and holding to the soft tissue of the human body in which the primary intent is to enhance or restore the health and well-being of the client. "Practice of massage therapy" includes complimentary methods, including the external application of water, heat, cold, lubrication, salt scrubs, body wraps, or other topical preparations; and electromechanical devices that mimic or enhance the actions possible by the hands. "Practice of massage therapy" does not include medical diagnosis; practice of physical therapy; high velocity, low amplitude thrust to a joint, electrical stimulation, application ultrasound; or prescription of medicines. (See MCL 333.17851d)
- (11) *School* means any of the following accredited or licensed institutions of higher education that meet the minimum standards and curriculum, in compliance with MCL 333.16148:
1. A public or private community college, college, or university.
 2. A public or private trade, vocational, or occupational school.
- (12) *Spa establishment* means a commercial establishment that offers or engages in personal services that call for the patron to disrobe, including but not limited to, body wraps, hydro mineral wraps, body polish, body wash, baths and hydro tub soak. This term does not include hospitals or other professional health establishments separately licensed by the state.
- (13) *Specified criminal activity* means any of the following specified crimes
1. An offense punishable by death or imprisonment for ninety (90) days or more under any of the following statutes, as amended from time to time, for which less than five (5) years elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:
 2. Michigan Penal Code (MPC) chapter IV (Adulterating and Misbranding);
 3. MPC chapter X (Arson and Burning);
 4. MPC chapter XI (Assaults);
 5. MPC chapter XVII (Bribery and Corruption);
 6. MPC chapter XXII (Compounding Offenses);
 7. MPC chapter XXVA (Criminal Enterprises);
 8. MPC chapter XXVIII (Disorderly Persons);
 9. MPC chapter XXXI (Embezzlement);
 10. MPC chapter XXXIII (Explosives, Bombs, and Harmful Devices);
 11. MPC chapter XXXIV (Extortion);
 12. MPC chapter XLIII (Frauds and Cheats);
 13. MPC chapter XLIV (Gambling);
 14. MPC chapter XLV (Homicide);
 15. MPC chapter XLVIII (Indecency and Immorality);

16. MPC chapter LVIII (Mayhem);
17. MPC chapter LXVII (Prostitution);
18. MPC chapter LXVIIA (Human Trafficking);
19. MPC chapter LXXVI (Sexual Conduct);
20. MPC chapter LXXVIII (Robbery);
21. MPC chapter LXXXIII-A (Michigan Anti-Terrorism Act)
22. MCL chapter 333, Part 74 (Controlled Substances—Offenses and Penalties);
23. MCL 205.27 (Taxation—Prohibited Acts (including tax evasion));
24. MCL 257.625 (operating while intoxicated, impaired, controlled substance or other).
25. Any attempt, solicitation, or conspiracy to commit one (1) of the foregoing offenses.
26. Any offense enumerated in the city's Code which contains the same elements as one (1) of the foregoing state offenses.
27. Any offense in another jurisdiction that, had the predicate act(s) been committed in the state, would have constituted any of the foregoing offenses.

Sec. 14-392. - Licensed professions excepted.

- (a) This article does not apply to a licensed physical therapist, athletic trainer, cosmetologist, or barber, performing functions authorized under the license held, nor does this article apply to a licensed medical doctor, osteopath, podiatrist, nurse or chiropractor, or any individual working under the direct supervision of a licensed medical doctor, osteopath, nurse or chiropractor, while engaged in practicing the healing arts.
- (b) This article does not apply to hospitals, nursing homes, other medical care facilities/clinics licensed under the laws of this state or to the offices of a physical surgeon, chiropractor, or osteopath.

Sec. 14-393. – Massage/Spa establishments—Licenses required.

- (a) The township clerk shall issue massage establishment/spa establishment license upon investigation, and after receipt of all the required information and reports if the applicant meets the requirements hereunder and the requirements of township ordinances and has paid the necessary fees.
- (b) It shall be unlawful for any person to operate massage/spa establishment without a valid license issued by the clerk in accordance with the provisions of this article.
- (c) It shall be unlawful for any person to operate a massage/spa establishment unless each and every massage therapist has a valid massage therapist license issued by the state pursuant to MCL 333.17951 et seq. of the public health code, as amended, unless exempt from such licensing law.
- (d) It shall be unlawful for any individual to work as a massage therapist without having a valid massage therapist license issued by the state pursuant to MCL 333.17951 et seq. of the public health code unless exempt from such licensing law.

(e) No person granted a license pursuant to this article shall operate a massage/spa establishment or as a massage therapist under a name not specified in the person's license, nor shall any licensee conduct business under any designation or location not specified in the licensee's license.

Sec. 14-394. - Licenses to be displayed.

(a) A massage/spa establishment license issued under this article shall always be displayed in an open and conspicuous place in the lobby of the massage/spa establishment or school for which it was issued.

(b) It shall be unlawful for any massage therapist or student to work in, on or about any massage establishment, unless there shall be displayed in an open and conspicuous place in the lobby of said establishment, a massage therapist license issued to said massage therapist respectively pursuant to this article.

Sec. 14-395. - Accommodating two (2) or more patrons.

It shall be unlawful for any massage/spa establishment to accommodate two (2) or more patrons in the same room unless:

(1) The two (2) patrons in the same room knowingly and voluntarily request massage services in the same room; and

(2) The two (2) patrons requesting massage services in the same room execute a consent form indicating permission to share a room and that they know each other.

Sec. 14-396. - Responsibility of employer.

It shall be unlawful for any person operating an establishment to permit or allow an employee, student, agent or massage therapist, or any person whatsoever, to violate this article on the premises of the establishment.

Sec. 14-397. - Alcoholic beverages and controlled substances prohibited.

No person shall sell, give, consume, dispense, provide or keep or cause to be sold, given, dispensed, provided or kept, any alcoholic beverage or controlled substances as defined by state law on the premises of any establishment.

Sec. 14-398. - Access and inspections.

(a) All establishments subject to this article are declared to be public places, and shall not, during business hours, have the doors to the exits and entrances of such establishments locked or obstructed in any way to prevent free ingress and egress of persons; provided, however, such doors may be closed.

(b) Every establishment subject to this article shall be open for inspection by authorized township officials concerned with the licensing and supervision of such establishment during operating hours for the purpose of enforcing any of the provisions of this article;

other ordinances or regulations of the township relating to the public health, safety and welfare;, or state law.

(c) If reasonably necessary to perform authorized work, perform their duties, or to preserve the peace, an authorized township official may enter upon and inspect the establishment at all reasonable times during business hours, or during times when the licensed premises are occupied by an employee or owner of establishment. It shall be unlawful for any person to refuse entry to a premises which a massage/spa establishment or massage school is ostensibly being operated, by authorized township officials for the purpose of making lawful inspections. A search warrant shall not be required for such inspections, in accordance with the opinion of the Michigan Supreme Court in Gora v. Township of Ferndale, 456 Mich. 704 (1998). It is unlawful for any licensee to deny or refuse access to the premises or to hinder the official in any manner in the performance of his or her responsibilities under this article, and such refusal shall constitute sufficient grounds for immediate revocation of a license granted under the provisions of this article.

(d) It is unlawful for any licensee to deny or refuse access to the premises or to hinder the township official in any manner in the performance of his or her responsibilities under this article and such refusal shall constitute sufficient grounds for the immediate revocation of a license granted under this article.

Sec. 14-399. - Closing hours.

No massage establishment shall be kept open for any purpose between the hours of 10:00 p.m. and 8:00 a.m.

Sec. 14-400 - Maintenance of premises; sterilization and cleaning equipment.

It shall be the duty of every person conducting or operating an establishment to always keep the same in a clean and sanitary condition. All equipment, including but not limited to, shower stalls, toilets, and lavatories, used in the establishment shall be maintained in a clean and sanitary condition. All instruments and mechanical, therapeutic, and bathing devices or parts thereof that come into contact with the human body shall be sterilized by a modern and approved method of sterilization, before initial use, and any such instruments and devices or parts thereof, after having been used upon one (1) patron, shall be sterilized before being used upon another. Towels, linens, and items for personal use shall be clean, freshly laundered, and shall not be furnished for use of another patron until thoroughly laundered.

Sec. 14-401. - Cleanliness of employees.

The skin and hands of those attending patrons shall be clean and in a healthy condition, and the nails shall be kept short. The hands shall be washed thoroughly with hot running water, using proper soap or disinfectant before providing service or treatment to a patron.

Sec. 14-402. – Prohibited Sleeping equipment.

No beds, mattresses, water mattresses, cots or other equipment designed for sleeping shall be permitted at the establishment.

Sec. 14-403. - List of employees; employee information.

The establishment shall maintain a register of the names and addresses of all employees, both on-duty and off-duty. Included in the register will be a copy of each massage therapist license. Such register shall be shown to the authorized township official upon request. Such register shall be available at the establishment for inspection by township official(s) and/or County or State health departments during regular business hours.

Sec. 14-404. - Keeping of records.

Records of the establishment: Every person who operates an establishment shall maintain an accurate record of all patrons accommodated; and such records shall include the patron's names, proof of identity age and current address together with the time, date and place of service, the nature of the service provided, and the name of the massage therapist providing the service. Every patron shall furnish proof of identity by showing a valid driver's license, voter registration certificate or similar identification, to the person that operates the establishment for the purpose of maintaining the accuracy of the establishment's record requirement. Such records shall always be available at the establishment for inspection by any authorized township official and/or County or State health departments during business hours.

Sec. 14-405. - Clothing of employees and other persons.

All employees and other persons on the premises, except for patrons receiving a massage from a state licensed massage therapist, shall be completely clothed. For the purposes of this article, the term "completely clothed" means having on the upper portion of the body appropriate undergarments and either a blouse or shirt which shall cover all the upper body, including the torso, excluding the arms and neck, and shall mean having on the lower body appropriate undergarments plus either pants, shorts or a skirt, and said pants, shorts or skirt must cover from the waist down to a point at least two (2) inches above the knee. All clothes worn in compliance with this article shall be entirely non-transparent.

Sec. 14-406. Required General Facilities

No license to conduct a massage establishment, spa, massage school or similar business shall be issued unless an inspection by the township reveals that the establishment complies with each of the following minimum requirements:

(1) *Signs.* A recognizable and readable sign shall be posted at the main entrance identifying the establishment as a massage establishment, spa or school provided that all such signs shall comply with the sign requirements of the township.

a. Massage and spa establishments shall post and maintain a copy of the human trafficking notice as set forth in MCL 752.1035 and as amended.

(2) *Lighting.* Minimum lighting shall be provided in accordance with the township building code, and at least one (1) artificial light of not less than sixty (60) watts or equivalent shall be provided in each enclosed room or booth where massage services are being performed.

(3) *Ventilation.* Minimum ventilation shall be provided in accordance with the township building code.

(4) *Disinfecting.* Equipment for disinfecting and sterilizing instruments used in performing the acts of massage shall be provided.

(5) *Water.* Hot and cold running water shall be always provided.

(6) *Cabinets.* Closed cabinets shall be provided, which cabinets shall be utilized for the storage of clean linen.

(7) *Interior structure, doors, openings, locks.* Adequate massage facilities enabling the accommodation of at least two (2) patrons shall be provided. Adequate facilities, for the purpose of this section, shall be defined as separate enclosed rooms, having doors capable of being closed but not locked. Exterior doors may have locks, but such exterior doors shall not be locked while the establishment is open for business or while any massage is being performed therein. Barrier-free dressing and toilet facilities shall be provided to patrons and employees. One (1) toilet and one (1) wash basin shall be provided at every massage establishment. Separate dressing and toilet facilities shall be provided for male and female patrons.

(8) *Good repair and sanitary conditions.* All walls, ceiling, floors, pools, showers, bathtubs, whirlpools, steam rooms, saunas, and all other physical facilities for the establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, or steam or vapor cabinets, shower compartments, and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs and/or showers shall be thoroughly cleaned after each use.

(9) *Towels and linens.* Clean and sanitary towels and linens shall be provided for each patron of the establishment. No common use of towels or linens shall be permitted.

(10) *Wash basin.* A minimum of one (1) separate wash basin shall be provided in each establishment for the use of employees of any such establishment. The basin shall always provide antiseptic soap or detergent and hot and cold running water and shall be located within or as close as practicable to the area devoted to the performing of massage services. In addition, there shall be provided at each wash basin sanitary towels placed in permanently installed dispensers.

(11) *Entrances and exits.* No establishment shall have an entrance or exit way providing a direct passageway to any other type of business, residence or living quarters.

Sec. 14-407. - Supervision.

Each massage establishment, spa or massage school shall have an owner, manager or supervisor who has been identified on the application for a massage establishment license on the premises at all hours that the establishment is occupied by patrons or is open to the public. It shall be unlawful for any person not identified on the establishment license application to work as a manager of a massage establishment or spa unless the proposed manager is listed the application along with the individual's legal name and any aliases, home address, telephone numbers, date of birth, and driver's license number. All managers shall be over the age of 21 years old. The licensee shall be responsible for notifying the township of any change in management. A violation of this section by an agent, or employee of the licensee shall constitute a violation by the licensee. Such violation by a licensee shall also constitute a violation by the owner, president, and/or other supervisory official of the licensee, in his or her individual capacity, for permitting another to violate the article. Any such violation may be a basis for suspending, revoking, or not renewing a license.

Sec. 14-408. - Massage establishment as a school of massage.

A school of massage licensed as such under this article shall be governed by all of the terms hereunder and further must comply with the requirements set forth in MCL 333.17951 et seq., 333.16148 and any other regulations required by law.

DIVISION II. - LICENSES**Sec. 14-409. - Duty of city clerk.**

The township clerk shall:

- (1) Accept all applications and fees required to be filed if complete.
- (2) Keep a record of all applications made.
- (3) Ensure that fees in the proper amount accompany each application and submit the fees to the township treasurer.
- (4) Upon receipt of a properly and fully completed license application, forward the applications to the police department, the building department, planning department, fire department or any other department the clerk deems necessary to review the application.
- (5) Grant, refuse, suspend or revoke licenses or applications upon the investigation, recommendation or approval or non-approval of the authorized township officials.

Sec. 14-410. - Application for establishment license.

- (A) A person shall not operate, maintain, or allow a massage establishment within the Township without obtaining a license from the Township Clerk pursuant to the provisions of this article.

(B) Massage/Spa Establishments and massage schools operating pursuant to a valid certificate of occupancy on the effective date of this article are hereby granted a de facto temporary license to continue operating for a period of 120 days following the effective date. During this period all massage/spa establishments and massage schools shall apply for a license pursuant to this article; and by expiration of 120 days shall conform to all requirements for issuance of a license.

(C) Any person desiring an establishment license shall file a written application, with the township clerk on a form to be furnished by the township clerk.

(1) The application shall set forth the following:

a. The applicant's full legal name and other names used by the applicant in the preceding five (5) years, including whether the applicant is an individual or a corporation, state of incorporation, partnership, or other entity.

b. The business name, phone numbers, location, legal description, and designation under which the establishment is to be operated. A statement whether the applicant is the owner of the premises wherein the establishment will be operated or the holder of a lease thereon for the period to be covered by the license. If the premises are leased, a copy of the signed lease for the business premises and written consent from the owner to utilize the premises for the described purpose, if the premises are not owned by the applicant.

c. The business address where the establishment is to be operated and the residential mailing address of the applicant.

d. The name, residence addresses and telephone numbers of the manager or other individual to be principally in charge of the operation of the establishment.

e. The following personal information concerning the applicant:

1. *Sole proprietor*. If the applicant is a sole proprietor, written proof of age, in the form of a driver's license, state identification card or a picture identification document containing the applicant's date of birth issued by an agency of a state or the federal government.

2. *Other*. If the applicant is not a sole proprietor, then the partnership, limited liability company, corporation, or other legal entity shall submit a complete list of the entity's:

i. Officers.

ii. Directors.

iii. Partners, members, or shareholders (natural persons) holding a ten percent or greater ownership interest in such legal entity, or if there is no shareholder (natural person) with at least a ten (10) percent interest, the ten (10) shareholders with the greatest ownership interest.

iv. Employee or agent primarily responsible for operation of the massage or spa establishment; and

v. Written proof of age, in the form of a driver's license or a picture identification document containing the applicant's date of birth issued by an agency of a state or of the federal government for each person listed in subparts i-iv above.

f. A statement of whether the applicant or any person listed in response to section 14-410(1) e.2. has been an owner, director, officer, partner, member, or shareholder of an establishment that has, in the previous five (5) years (and at a time during which the person was so related to the establishment):

1. Been declared by a court of law to be a nuisance; or
2. Had its license to operate a massage establishment or spa establishment revoked.

g. A statement of whether the applicant or a person listed in response to Section 14-410-30(1)e2. has in the previous twelve (12) months resided with someone who has been an owner, director, officer, partner, member, or shareholder of a massage establishment or spa establishment that has, in the previous five (5) years (and at a time during which the person was so related to the establishment):

1. Been declared by a court of law to be a nuisance;
2. Had its license to operate a massage establishment or a spa establishment revoked.

h. A sworn and notarized statement of a registered agent and at least 18 years of age, required to be designated by a licensee to receive any process, notice or demand required or permitted by law or under this article to be served upon the applicant.

i. The days and times the establishment will be open to provide services.

j. A detailed summary or description of the nature and type of services to be provided at the establishment.

k. Listing of all criminal arrests and convictions, other than misdemeanor traffic violations, fully disclosing the jurisdictions in which convicted, the offense on which arrested initially and the offense for which he or she was ultimately convicted, the dates of conviction and the penalty.

l. Release and authorization for the township, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the license.

m. Written declaration by the applicant, given under oath or affirmation, under penalty of perjury, that the information contained in and attached to the application is true and correct, said declaration being duly dated and signed.

(2) The application shall be accompanied by the following:

a. A tender of the correct license fee as hereinafter provided.

b. Proof that an assumed name certificate has been filed with the county clerk; and/or if required, the state if the applicant is to operate the establishment under an assumed name.

c. If the applicant is a partnership, limited liability company, corporation or other legal entity required to be chartered under the laws of the state or authorized by the state to do business in the state, such corporation must be chartered under the laws of the state or authorized by to do business in the state and must submit copies of the certificate of organization or incorporation, as applicable, and articles of organization or incorporation, as applicable.

d. For every person on the premises who offers, or will offer, services for which a license under MCL 333.17951 et seq. is required, a copy of the state license for each such person as well as a color photograph, no smaller than two (2) inches by two (2) inches, showing the face, neck, and shoulders of each such person; or, if there are none, a statement certifying that no person on the premises offers, or will offer, services for which said person is required to be licensed by the state pursuant to MCL 333.17951 et seq.

e. It shall be the responsibility of the holder of the license for the establishment, or the employer of any persons purporting to act as a massage therapist to ensure that each person employed as a massage therapist shall first have obtained a valid license as required by state law.

f. Each applicant shall certify that it will make available any person purporting to act as a massage therapist upon the premises for an interview with the township police department at the premises upon reasonable notice. Such person shall be subject to interview by the police department outside of the presence of the establishment owners, their employees or representatives or third persons.

g. Each application shall be accompanied by a public liability and property damage insurance policy insuring the establishment and its personnel against any liability arising out of its operation as a massage establishment or the provision of massage services on the premises. Such policy shall provide for proof of professional liability insurance with limits of liability not less than \$500,000.00 per occurrence. The

insurance policy requirements of this division may be met by submitting proof that the minimum insurance coverage is provided to the applicant as a benefit of membership in a professional massage organization, such as the National Certification Board for Therapeutic Massage and Bodywork (NCMTMB), the American Massage Therapy Association (AMTA), or similar entity, and proof that the applicant's dues for membership in such organization are current and paid through at least an additional 90-day period from the date of application. No person or entity shall maintain, operate, or cause to be operated any massage establishment unless the insurance required by this section is in force at the time of operation.

(3) The information provided by an applicant in connection with an application for a license under this article shall be maintained on a confidential basis, and such information may be disclosed to the public only as required under governing law. Any information protected by the right to privacy as recognized by state or federal law shall be redacted prior to any required disclosure under the Michigan Freedom of Information Act, 15.231 et seq. or other applicable law.

Sec. 14-411. - Investigation by authorized township official.

Upon receiving a complete application for a massage establishment/spa license, the authorized township officials shall conduct an investigation of the applicant, if an individual; or of the stockholders holding more than ten (10) percent of the stock of the corporation; and of the officers and directors, if the applicant is a corporation, or of the partners, including limited partners, if the applicant is a partnership, or the holder of any lien, of any nature, upon the establishment and/or the equipment used therein or of the manager or other individual principally in charge of the operation of the establishment. This includes criminal background checks. The authorized township official may, in his or her discretion, require a personal interview of the applicant, and such further information, identification and physical examination of the applicant as shall bear on the investigation.

Authorized township officials shall investigate the premises where the establishment is to be carried on, for the purposes of assuring that such premises comply with all the sanitation requirements as set forth in these regulations and with the regulations of public health, safety and welfare of the township including but not limited to zoning, building and fire code.

Any licenses required by this article shall be issued and signed by the township clerk upon the investigation and recommendation and approval of the authorized township officials.

Sec. 14-412. - Issuance of massage /spa establishment license.

Authorized township officials shall present their findings to the township clerk for issuance of a massage or spa establishment license within sixty (60) days of receipt of the application unless the clerk finds that:

(1) The correct license fee has not been tendered to the township or sufficient funds were not provided.

(2) The operation as proposed by the applicant, if permitted, would not comply with all applicable laws.

(3) The applicant, if an individual, or any of the stockholders holding more than ten (10) percent of the stock of the corporation, or any of the officers or directors, if the applicant is a corporation or any of the partners, including limited partners, if the applicant is a partnership, or the holder of any lien, of any nature, upon the establishment and/or the equipment used therein or the manager or other individual principally in charge of the operation of the establishment has been convicted of any felony or a misdemeanor involving a violation of laws relating to specified criminal activity or health codes prior to the date of the application.

(4) The applicant has failed to provide information required by this article or has knowingly made any false, misleading, or fraudulent statement of fact in the license application or in any document required by the township in conjunction therewith.

(5) The applicant has had an establishment license or similar license revoked or suspended by this township, county or state or any other township or city, county or state or local agency prior to the date of the application.

(6) The applicant, if an individual, or any of the officers or directors, if the applicant is a corporation, or any of the partners, including limited partners if the applicant is a partnership, or the manager or other individual principally in charge of the operation of the establishment, is not over the age of eighteen (18) years.

(7) The applicant is neither the owner of the premises wherein the establishment will be operated, nor the holder of a lease for the period to be covered by the lease.

(8) The township has revoked a massage or spa establishment license at the premises (or from the same owner/lessor) within the previous twelve (12) months.

(9) The applicant and/or application does not meet all other requirements of this article or other ordinances of the township pertaining to business establishments including but not limited to fire, health, building and zoning ordinances.

(10) The applicant or a person listed in response to Section 14-410(1) e..2. has been an owner, director, officer, partner, member, or shareholder of a massage establishment or spa establishment that has, in the previous five (5) years (and at a time during which the person was so related to the establishment):

a. Been declared by a court of law to be a nuisance; or

b. Had its license to operate a massage establishment revoked.

(11) The applicant or a person listed in response to section 14-410(1) e. has within the previous five (5) years been convicted of, or pleaded guilty or entered a plea of nolo contendere to, a specified criminal activity, as defined in this article.

(12) The establishment does not comply with all applicable building, health, and life safety codes, or the building to be occupied does not have a valid, current certificate of compliance.

(13) The applicant or a person listed in response to section 14-410(1)e.2. has in the previous twelve (12) months resided with someone who has been an owner, director, officer, partner, member, or shareholder of a massage/spa establishment that has, in the previous five (5) years (and at a time during which the person was so related to the establishment):

- a. Been declared by a court of law to be a nuisance; or
- b. Had its license to operate a massage/spa establishment revoked.

(14) The applicant is a partnership, limited liability company, corporation or other legal entity that is required to be chartered under the laws of the state or authorized by the secretary of state to do business in the state but is not so chartered or authorized.

A license, if issued, shall be issued in the name of the applicant. The license shall be posted in a conspicuous place at or near the entrance to the establishment so that it may be read at any time that the establishment is occupied by patrons or is open to the public.

Sec. 14-413. - Fees.

The nonrefundable fee for a license under this article shall be in an amount set by the township board pursuant to a resolution. A nonrefundable fee shall also be required for each application involving extension or expansion of a building for other place of business of the establishment.

Sec. 14-414 - Transfer prohibited.

Establishment licenses are not transferable, separable, or divisible, and such authority as a license confers shall be bestowed only on the licensee named therein.

Sec. 14-415 - License valid for two (2) years.

(a) The permit year shall begin on October 1st and shall terminate on the second calendar next following issuance. Each license issued under these regulations shall be valid for no more than two (2) years from the date of its issuance as shown thereon.

(b) Each license granted hereunder shall be conspicuously displayed on the wall of the lobby of the establishment, said wall being in an area open to the public and a photograph of the massage therapist shall be attached to his or her license on display.

Sec. 14-416. - Renewal of licenses.

Any time after the expiration of twenty-three (23) months of the term of a license required by this article, the licensee may file with the township clerk a written application to renew such license on a form to be furnished by the township clerk. Such application shall contain the information required herein for an original license to the extent that such information would not be duplicative and such application shall be accompanied by a tender of the correct fee as herein provided. The township clerk shall renew such license unless the authorized township officials find that the requirements of this article for the reissuance of a license are not met.

Sec. 14-417. - Obtaining license by fraud.

It shall be unlawful for any person to knowingly make any false, fraudulent, or untruthful statement, either written or oral, or in any way knowingly to conceal any material fact, or to give or use any fictitious name to secure or aid in securing a license required by this article and any such license so secured shall be void.

Sec. 14-418. - Fraudulent use of license.

It shall be unlawful for any person to fraudulently make use of, in any manner to his own or another's benefit, a massage/spa establishment or massage therapist's license which has not been duly issued to him or in accordance with the provisions of this article, state laws or other laws and regulations.

Sec. 14-419. - Counterfeiting, changing, defacing license.

It shall be unlawful for any person to counterfeit or forge or to change, deface or alter a license required or issued under the provisions of this article or under state law.

Sec. 14-420 - Patronage of massage business by minors.

No person licensed as a massage therapist shall massage or treat any person under the age of eighteen (18) years upon the licensed premises, except upon written order by a licensed medical doctor, doctor of osteopathic medicine, or physical therapist, such order being dated and in the possession of the massage therapist giving the massage or treatment. If the person under the age of eighteen (18) years is accompanied by a parent or legal guardian during the massage or treatment, this provision shall not apply.

Sec. 14-421. - Unlawful activities.

It shall be unlawful for any person to massage any other person, or give or administer any bath or baths, or to give or administer any of the other things mentioned in this article for illegal purposes, or for monetary gain or profit have any contact with a person's breasts, genital area or buttocks in a manner intended to arouse, appeal to or gratify a person's lust, passions or sexual desire. Any violation of this provision shall be deemed grounds for the revocation of the license.

Sec. 14-422. - Exposure of genitals, pubic area, etc.

(a) No massage therapist or student shall massage a patron whose genitals are exposed during the treatment.

(b) No patron receiving a massage shall expose his or her genitals, pubic hair, anus or the areola or nipple of the female breast to another person on the premises of an establishment. This prohibition relating to exposing the areola or nipple of the female breast shall not apply when the massage therapist is certified to provide oncology massage or manual lymphatic drainage massage.

Sec. 14-423. - Advertising.

No massage or spa establishment, massage school or similar business granted a license under this article or under state law shall place, publish or distribute, or cause to be placed, published or distributed, any advertisement, picture or statement which is known or through the exercise of reasonable care should be known to be false, deceptive or misleading in order to induce any person to purchase or utilize any massage services.

Sec. 14-424. - Sale or transfer of interest in establishment.

Upon the sale or transfer of any interest in an establishment, the license shall be null and void. A new application shall be made by any person, firm or entity desiring to own or operate the massage/spa establishment. The provisions of section 14-410 of this article shall apply to any person, firm or entity applying for a massage/spa establishment license for premises previously used as such establishment.

Any sale or transfer of any interest in an existing establishment or any application for an extension or expansion of the building or other place of business of the establishment shall require inspection and shall require compliance with this article. A fee in an amount as established by resolution of the township board shall be payable for each application involving extension or expansion of the building or other place of business of the massage establishment.

Sec. 14-425 - Name of business.

No person licensed under this article shall operate under any name or conduct his business under any designation not specified in the license.

DIVISION III. - SUSPENSION, REVOCATION, APPEALS AND MISCELLANEOUS PROVISIONS

Sec. 14-426. - Suspension.

Any license issued under this article may be suspended for a period not to exceed ninety (90) days by the township clerk upon the investigation, recommendation or approval of the authorized township officials for a minor violation of this article by the licensee thereof. Minor violations are deemed to include, but not limited to, violations of the following sections of this article:

Sec. 14-394	Licenses to be displayed
Sec. 14-395	Accommodating two (2) or more patrons
Sec. 14-399	Closing hours
Sec. 14-400	Maintenance of premises; sterilization and cleaning equipment
Sec. 14-401	Cleanliness of employees
Sec. 14-402	Prohibited Sleeping equipment
Sec. 14-403	List of employees; employee information
Sec. 14-404	Keeping of records
Sec. 14-406	Required Establishment Facilities
Sec. 14-407	Supervision
Sec. 14-408	Massage establishment as a school of massage
Sec. 14-416	Renewal of licenses
Sec. 14-425	Name of business

Any establishment license issued under this article may be suspended for a period not to exceed ninety (90) days by the township clerk upon the investigation, recommendation, or approval of the authorized township official(s) for a violation of this article by an agent or employee of the massage establishment provided such violation occurred at the establishment.

Such suspension shall be effective ten (10) days after written notice thereof is given to the licensee. Such notice shall inform the licensee of the reason(s) for such suspension, the duration of such suspension, the beginning of such suspension, and the right to appeal under the provisions of this article.

Such notice may be given by delivering the same to the licensee, by delivering the same to the establishment, or by depositing the same in the United States mail, postage prepaid, certified or registered mail, return receipt requested, addressed to the licensee at the address stated on the license application and such notice shall be deemed given upon deposit of the notice in the United States mail as aforesaid.

This section is cumulative of all other rules, regulations, and laws. An appeal, as provided herein, from any suspension hereunder, shall automatically stay such suspension pending such an appeal. The police chief, his/her designee or other authorized official shall have the authority to take possession of the license wherever it is located and hold the same until the suspension period has expired if:

- (1) A timely appeal has not been made after the effective date of the suspension; or,
- (2) An appeal is made, and the suspension is upheld in whole or in part.

Sec. 14-427. - Revocation.

Any license issued under this article may be revoked by the township clerk upon the investigation, recommendation, or approval of the authorized township official(s) for a significant violation of this article or should the licensee no longer qualify for a license as an original applicant, or the licensee's license has been suspended three (3) times within the ten-year period or has misrepresented or withheld information on the original or renewal application. Any establishment license issued under this article may be revoked by the township clerk upon the investigation, recommendation, or approval of the authorized township official(s) of a significant violation of this article by an agent or employee of the establishment provided such violation occurred on the establishment premises. Significant violations are deemed to include, but not limited by, violations of the following sections of this article:

Sec. 14-393	Massage spa establishments – Licenses required
Sec. 14-396	Responsibility of employer
Sec. 14-397	Alcoholic beverages and controlled substances prohibited
Sec. 14-398	Access and inspections
Sec. 14-405	Clothing of employees and others persons
Sec. 14-414	Transfer prohibited
Sec. 14-417	Obtaining license by fraud
Sec. 14-418	Fraudulent use of license
Sec. 14-419	Counterfeiting, changing, defacing license
Sec. 14-420	Patronage of massage business by minors
Sec. 14-421	Unlawful activities
Sec. 14-422	Exposure of genitals, pubic area, etc.
Sec. 14-423	Advertising
Sec. 14-424	Sale or transfer on interest in massage business

Such revocation shall be effective immediately after written notice thereof is given to the licensee. Such notice shall inform the licensee of the reason(s) for such revocation and the right to appeal under the provisions of this article. Such notice may be given by delivering same to the establishment, or by depositing the same in the United States mail, postage prepaid, certified, or registered mail, return receipt requested, addressed to the licensee at the address stated on the license application and such notice shall be deemed given upon deposit of the notice in the United States Mail as aforesaid.

This section is cumulative of all other rules, regulations, and laws. An appeal, as provided herein, from any revocation hereunder, shall automatically stay such revocation pending such appeal. The police chief, his/her designee or other authorized

official shall have the authority to take possession of the license wherever it is located and hold the same until the revocation period has expired if:

(1) A timely appeal has not been made after the effective date of the revocation;
or

(2) An appeal is made, and the revocation is upheld in whole or in part.

Sec. 14-428. - Appeals.

(a) Any person aggrieved by an action or decision of the township clerk or authorized township official(s) regarding the issuance, suspension or revocation of a license required hereunder may, within thirty (30) days thereafter, appeal to a hearing examiner appointed by the township board. The appeal of a revocation of a license shall be accompanied by the posting of a one-thousand-dollar (\$1,000.00) cash bond. If the revocation or cancellation is set aside, then the bond is to be refunded in full. If the revocation or cancellation is upheld, then the bond is forfeited to the township as a reasonable estimate of the expenses associated with the appeal process.

(b) The appeal to the hearing examiner shall be initiated by filing a written objection with the hearing examiner. The written objection shall state what the action or decision of the township clerk or authorized township official should have been and why. A copy of the document containing the notice of the action or decision complained of shall be attached to said written objection. Upon receipt of said written objection and attachment, the hearing examiner shall set the same down for a hearing to be held within the next fifteen (15) days and advise all parties of the date, time and place of hearing. The person aggrieved shall bring to the hearing all licenses issued to him pursuant to this article. The township attorney may appear and represent the interests of the township clerk or authorized township official.

(c) At hearings before the hearing examiner, all witnesses will be sworn. The hearing examiner will hear the testimony of the township clerk or authorized township official who may be called. The hearing examiner will hear the testimony of the persons aggrieved along with any witnesses the person aggrieved may call. Additionally, the hearing examiner will review all documents and exhibits submitted to him by the parties. The hearing examiner will not be bound by formal rules of evidence and will control the evidence, reserving to himself the power to exclude testimony or exhibits he does not consider relevant.

(d) The hearing examiner will maintain an accurate record of the evidence adduced at the hearing.

(e) Within forty-eight (48) hours of the close of the hearing, the hearing examiner will notify the parties of the hearing examiner's decision. Within three (3) days of the close of the hearing the hearing examiner shall prepare a written report which will consist of a finding of facts and the final decision made by the hearing examiner. The hearing examiner will file the original report with the township clerk, will keep one (1) copy, will

send one (1) copy to the person aggrieved and will send one (1) copy to the police department and other authorized township officials as necessary.

(f) If the township clerk or authorized township official or the person aggrieved is dissatisfied with the hearing examiner's decision, he or she may, within five (5) days from the date the hearing examiner filed the report, file a written objection with the township board. When such an objection is filed, the township board will place the matter on the agenda of the township board for review at the next meeting of the township board which is at least five (5) days after the date of the filing of the objection. If the objection is filed by the township clerk or authorized township official(s), notice that the matter is on the agenda will be sent to the applicant by mail. The person aggrieved shall bring to the township board hearing all licenses issued to him pursuant to this article. When the matter comes before the township board, the township board will review the matter, considering such information as is in the hearing examiner's file and report and will either affirm, reverse, or modify the decision of the hearing examiner.

(g) As to an appeal taken to township board by the township clerk or authorized township official, the decision of the township board shall be final. As to an appeal taken to township board by a licensee, the decision, or decisions of which said licensee objects, said licensee may thereafter pursue his remedy by appealing the decision(s) of the township board to the county circuit court as permitted by law and court rules.

Sec. 14-429 PENALTY

Violation of this article or any provision hereunder shall be deemed a misdemeanor subject to imprisonment in the County jail for a period of up to ninety-three days or subject to fines up to five hundred dollars (\$500.00) plus court costs and/or in addition probation and terms and conditions as authorized by law.

Section 2. Severability

If any article, section, subsection, sentence, clause, phrase, or portion of this ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of remaining portions of the ordinance, it being the intent of the Township that this ordinance shall be fully severable.

Section 3. Repeal

All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

Section 4. Effective Date

This ordinance shall become immediately effective upon publication.

CERTIFICATION

I STANLEY GROT, Clerk for the Charter Township of Shelby, County of Macomb, State of Michigan, certify that this is a true copy of an Ordinance adopted by the Board of Trustees of the Charter Township of Shelby at its regular meeting on the 18th day of July 2023.

Stanley T. Grot, Township Clerk

INTRODUCTION: June 20, 2023

FIRST PUBLICATION: June 28, 2023

ADOPTION: July 18, 2023

SECOND PUBLICATION: July 26, 2023