

CITY OF HUBER HEIGHTS
STATE OF OHIO

ORDINANCE NO. 2018-O-2350

AMENDING THE BUSINESS REGULATION AND TAXATION CODE, PART VII OF THE HUBER HEIGHTS CODIFIED ORDINANCES, AND CREATING CHAPTER 738 - MASSAGE THERAPY ESTABLISHMENTS, AND DECLARING AN EMERGENCY.

WHEREAS, the elected officials of the City of Huber Heights, Ohio are responsible for the health, welfare and safety of all citizens of the City of Huber Heights, Ohio; and

WHEREAS, City Council declared a moratorium on the acceptance of Certificates of Zoning Compliance for Massage Therapy Establishments and similar uses to allow for the study of legislation regulating such establishments; and

WHEREAS, research conducted by City Staff concluded that other jurisdictions in the area have such Ordinances established; and

WHEREAS, the proposed Ordinance is a result of that study and would provide the City of Huber Heights with the mechanism to regulating Massage Therapy Establishments in the City of Huber Heights through a permit process that would provide for the health safety and welfare of its citizens.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Huber Heights, Ohio that:

Section 1. The Business Regulation Code, Part VII of the City of Huber Heights Codified Ordinances, is hereby amended by creating Chapter 738, Massage Therapy Establishments:

Chapter 738 Massage Therapy Establishments

738.1 Definitions

738.2 Permit Required; Prohibited Conduct; Exemptions

738.3 Permit Application Process

738.4 Issuance of Permit; Expiration and Renewal

738.5 Facility Requirements

738.6 Prohibitions

738.7 Transfer of Permit; Change of Information

738.8 Inspections

739.9 Penalties; Revocation of Permit

739.10 Appeals; Hearings

738.01 Definitions. For purposes of this Chapter the following definitions shall apply:

- (a) "Applicant" means a person who has applied for a permit to operate a Massage Therapy Establishment in the City of Huber Heights.
- (b) "Licensed massage therapist" means a person who is licensed under Chapter 4731 of the Ohio Revised Code to practice Massage Therapy in the State of Ohio.
- (c) "Massage service" means any method of exerting pressure on, stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external soft tissue of the body with the hands, or with the aid of any mechanical or electrical apparatus or appliance in exchange for anything of value. Massage Services shall also include the treatment of disorders of the human body by the manipulation of soft tissue through the systematic external application of massage techniques including touch, stroking, friction, vibration, percussion, kneading, stretching, compression, and joint movements within the normal physiologic range of motion; and adjunctive thereto, the external application of water, heat, cold, topical preparations, and mechanical devices in exchange for anything of value.

- (d) “Massage Therapy Establishment” means a fixed place of business where Massage Services are provided in exchange for anything of value.

738.02 Permit Required; Prohibited Conduct; Exemptions

- (a) After the effective date of this chapter all All Licensed Massage Therapists and Massage Therapy Establishments operating in the City of Huber Heights shall obtain a permit pursuant to this Chapter to operate
- (b) It shall be unlawful for any person to offer or perform Massage Services in the City of Huber Heights unless that person is a Licensed Massage Therapist with the State of Ohio. This provision applies to all Massage Services including but not limited to those performed at a Day Spa as defined under Section 1123.31 of the Huber Heights Zoning Code.
- (c) It shall be unlawful for any person to operate a Massage Therapy Establishment in the City of Huber Heights unless both of the following applies:
- (1) The owner or manager is a Licensed Massage Therapist in the State of Ohio.
 - (2) Massage Services provided in the Massage Therapy Establishment are performed exclusively by a Licensed Massage Therapist in the State of Ohio.
- (d) It shall be unlawful to employ a person to perform Massage Services in a Massage Therapy Establishment in the City of Huber Heights unless that person is a Licensed Massage Therapist in the State of Ohio.
- (e) It shall be unlawful for a person to operate a Massage Therapy Establishment in the City of Huber Heights without obtaining a Certificate of Zoning Compliance to operate a Massage Therapy Establishment from the City of Huber Heights.
- (f) Prohibited Conduct. No person that is if providing Massage Services in the City of Huber Heights shall knowingly do any of the following at, upon or within a Massage Therapy Establishment or elsewhere:
- (1) Place his or her hand upon, touch with any part of his or her body, fondle in any manner, or massage the sexual or genital area of any other person;
 - (2) Perform, offer, or agree to perform any act which would require the touching of the sexual or genital area of any other person;
 - (3) Touch, offer or agree to touch the sexual or genital area of any other person with any mechanical or electrical apparatus or appliance;
 - (4) Wear unclean clothing, no clothing, transparent clothing, or clothing that otherwise reveals the sexual or genital areas of the masseur or masseuse;
 - (5) Uncover or allow the sexual or genital area of any other person to be uncovered while providing a massage;
 - (6) Perform, offer or agree to perform a massage with or without compensation to any individual less than eighteen years of age without the full consent and permission of a parent or guardian.
- (g) Exceptions. The provisions of this Chapter shall not apply to the following:
1. Hospitals, medical facilities and public health centers (all as defined in Ohio Revised Code section 3701.01);
 2. A person licensed or registered by the State of Ohio Medical Board (other than a Massage Therapist) while performing his/her licensed or registered profession;
 3. A licensed cosmetologist, registered barber, registered barber apprentice, in which massages are administered only to the scalp, the face, the neck or the shoulder;

4. A licensed chiropractor, licensed podiatrist, licensed nurse, or any other licensed health professional while performing his/her licensed or registered profession;
5. A trainer for any amateur, semiprofessional or professional athlete or athletic team or school athletic program;
6. A person working under the direct supervision of individuals or establishments mentioned in this subsection (g) while performing his/her licensed or registered profession;
7. A person undertaking the required course work to become a licensed massage therapist while working under the direct supervision of a licensed massage therapist;
8. As used in this subsection (g) "licensed" means licensed, certified, or registered to practice in the State of Ohio.

738.03 Permit Application Process

- (a) Permit for Massage Therapy Establishments. The Chief of Police, or his or her designee is responsible for granting, denying, revoking, and renewing Massage Therapy Establishment permits. A person who wishes to provide Massage Services in the City of Huber Heights must submit a current valid Certificate of Zoning Compliance to the City of Huber Heights Chief of Police or his/her designee and an Application for the Massage Therapy Establishment. The Application for Massage Therapy Establishment shall be accompanied by the following information:
 - (1) Full legal name and current residential address of the applicant(s);
 - (2) The address of the proposed Massage Therapy Establishment;
 - (3) The names of any persons who will perform Massage Therapy at the Massage Therapy Establishment and copies of all licenses of those persons;
 - (4) A list of other services to be offered at the Massage Therapy Establishment;
 - (5) The website of the Massage Therapy Establishment, if applicable;
 - (6) All felony and misdemeanor convictions, of the applicant excluding those for traffic offenses;
 - (7) A copy of the license provided by the State Medical Board of Ohio for the owner and/or manager and each person who will practice Massage Therapy at the Massage Therapy Establishment.
 - (8) A printed form, signed the owner of the parcel of real property which is the proposed location of the Massage Therapy Establishment, whereby each such owner certifies that he/she/it understands and acknowledges that a Massage Therapy Establishment will be located on said parcel of real property; and
 - (9) Any other information requested at the time of application.
- (b) Each individual that performs Massage Services in the City shall be required to obtain a permit from the Chief of Police or his/her designee. Such permits are non-transferable. Before any individual may be issued a permit, he or she shall submit on a form to be provided by the City the following information:
 - (1) The individual's name and a personal or business address where mail may be delivered.
 - (2) The address where Massage Services will be performed;
 - (3) A copy of the license provided by the State Medical Board of Ohio.
 - (4) For renewals, a statement that the applicant has not violated and provision of this Chapter.

- (c) A permit granted pursuant to this section shall be subject to annual renewal by the Chief of Police upon the written permit application of the individual and a finding by the Chief of Police that the individual has not committed any act during the existence of the previous permit period which would be grounds to deny the initial permit application.
- (d) Applications shall be submitted and approved before a Massage Therapy Establishment can be operated and Massage Services offered.
- (e) Establishments and individuals performing Massage Services that were in operation prior to the effective date of this section must submit an application not later than 90 days after the effective date of this section.
- (f) Once an application is submitted, the applicant shall receive a response in writing no later than 30 days after the date of submission.
- (g) In the event that an application is denied, the applicant may submit a new application.

738.04 Issuance of Permit; Expiration and Renewal

- (a) Upon approval of an application, an applicant shall be provided with a Massage Therapy Establishment permit to operate the Massage Therapy Establishment or a Massage services provider permit (as the case may be).
- (b) Each permit shall contain the following information:
 - (2) The name of the applicant and address of the Massage Therapy Establishment where services will be performed;
 - (3) A unique identification number;
 - (4) A signature from the Chief of Police or his designee;
 - (5) The effective dates of the permit.
- (c) Each permit shall be valid for a maximum of 1 year. Regardless of the date issued all permits shall expire on December 31 of the year they were issued.
- (d) No later than 30 days before the expiration date of a permit to operate a Massage Therapy Establishment or provide Massage Services, the permit holder shall submit a new application pursuant to Section 738.03 of this section.
- (e) Upon approval of the application for a Massage Therapy Establishment, the applicant shall be provided with a new Permit to operate the Massage Therapy Establishment.
- (f) Upon approval of the application for a Massage Therapist Permit the applicant shall be provided with a new Permit to provide Massage services.

738.05 Facility Requirements

- (h) All permits issued under Section 738.04 of this section must be displayed in a conspicuous location within the Massage Therapy Establishment.
- (i) All tables and surfaces in the Massage Therapy Establishment shall be clean and disinfected.
- (j) Clean linen, towels, and other materials used in connection with provided Massage Therapy services shall be stored in a closed cabinet.
- (k) The permit holder shall comply with any other requirement for operation as a business that is set forth in the Codified Ordinances of the City of Huber Heights.

738.06 Prohibitions

- (a) No person who has been issued a permit to operate a Massage Therapy Establishment shall employ any individual under the age of 18.

738.07 Transfer of Permit; Change of Information

- (a) An individual may transfer a permit to operate a Massage Therapy Establishment to another individual by submitting a request in writing to the City of Huber Heights; a fee may be assessed for a transfer of permit as listed in the City of Huber Heights Fee Schedule, Chapter 738, Appendix A, of the Codified Ordinances.
- (b) The City of Huber Heights shall respond within 10 days of receipt of the transfer request; if the transfer of permit is approved then a new permit will be issued
- (c) In the event that information submitted as part of the application process changes, the permit holder shall notify the City of Huber Heights with ten (10) days of such change.
- (d) Failure to update information in a timely manner may result in a suspension or revocation of a permit and a first-degree misdemeanor. A separate offense shall be deemed committed each day during on which or which a violation on non-compliance occurs or continues.

738.08 Inspections

- (a) Any of the following individuals may conduct inspections to determine compliance with this section and other applicable state and local laws:
 - (1) A police officer;
 - (2) A zoning or Code Enforcement officer or administrator
 - (3) The Montgomery County Health Commissioner or their designee;
 - (4) A building inspector appointed by the City of Huber Heights;
 - (5) Any other person authorized by the City of Huber Heights to conduct inspections of a Massage Therapy Establishment; or
 - (6) A representative of the State Medical Board of Ohio.
- (b) Inspections may be conducted at any time with or without notice.
- (c) Inspections may be conducted at least once per year to determine compliance with this section.
- (d) Permit holders shall be given 10 days from the date of inspection to correct any violations of this section. Permit holders shall immediately correct any issues found to be noncompliant with Section 738.05, Facility Requirements.

738.09 Penalties; Revocation of Permit

- (a) Any individual who offers or performs Massage Therapy or Massage Services in violation of this Chapter is guilty of a misdemeanor of the first degree. A separate offense shall be deemed committed each day during on which or which a violation on non-compliance occurs or continues.
- (b) Any individual who holds a permit issued under Section 738.04 of this Chapter who violates any provision of this Chapter is guilty of a misdemeanor of the first degree. A separate offense shall be deemed committed each day during on which or which a violation on non-compliance occurs or continues.
- (c) In addition to a fine, the following actions may be taken against an individual who holds a permit under Section 738.04 of this section and violates any provision of this section:
 - (1) An additional fine may be assessed;
 - (2) A permit to operate a Massage Therapy Establishment may be suspended for up to 90 days; and
 - (3) After a third offense, a permit to operate a Massage Therapy Establishment may be revoked.

738.10 Appeals; Hearings

- (a) Appeals.
 - (1) Any individual may appeal the denial or revocation of a permit to operate a Massage Therapy Establishment or provide Massage Services.

- (2) Any individual who holds a permit to operate a Massage Therapy Establishment may appeal the findings of an inspection conducted under Section 738.08 of this Chapter.
 - (3) Any individual may appeal a penalty assessed under Section 738.9 of this Chapter.
 - (4) If an applicant has been denied a permit to operate a Massage Therapy Establishment, or provide Massage Services, failed an inspection, or received a penalty under Section 738.09, the applicant or permittee, shall, within 3 business days, have the right to appeal to the City Manager from such denial, revocation, penalty or suspension. The appeal shall be presented in writing for review by the City Manager. The City Manager shall, within 3 business days, notify the appellant of the findings of the appeal review. The City Manager, based upon the findings of the appeal review, may reinstate, modify, amend, or uphold the penalty assessed under 738.9. of this section. If the appellant does not accept the findings of the City Manager, the applicant or permittee can appeal to City Council through a hearing process defined in 738.10 (b) of this section.
- (b) Hearings. If an applicant has been denied a permit to operate a Massage Therapy Establishment, or provide Massage Services, failed an inspection, or received a penalty under Section 738.09, the applicant or permittee, and does not accept the findings of the City Manager during the appeal review shall, within 3 business days, have the right to appeal to the City Council from such denial, revocation or suspension. Notice of appeal shall be filed in writing with the City Manager who shall fix the time and place for hearing at the next meeting of City Council but not later than 15 days thereafter. The City Manager shall notify the Clerk of Council of the time and place of such hearing. A qualified quorum of Council is required for the hearing. The appellant may appear and be heard in person or by counsel. If, after hearing, a majority of the members of Council present at such meeting declare in favor of the applicant, such permit shall be forthwith issued or fully reinstated, as the case may be; otherwise, the order appealed from shall become final.

Section 2. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were taken in meetings open to the public and in conformance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 3. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that a temporary moratorium has been in place pending the adoption of these permanent regulations in the Huber Heights Codified Ordinances; therefore, this Ordinance shall take full force and effect immediately upon its adoption by Council.

Section 4. This Ordinance shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights

Passed by Council on the 22nd day of October, 2018;
 ___8___ Yeas; ___0___ Nays.

Effective Date: October 22, 2018

AUTHENTICATION:

 Clerk of Council

 Mayor

 Date

 Date