

ORDINANCE NO. 1752 (#05 - 2024)

AN ORDINANCE AMENDING JMC § 5.07, CREATING REQUIREMENTS FOR MASSAGE BUSINESSES; DECLARING AN EMERGENCY; AND, FOR OTHER PURPOSES.

WHEREAS, it has come to the attention of the City Council of the City of Jacksonville, Arkansas, that it is necessary to create requirements for massage businesses. After due consideration and review, the following is deemed reasonable and shall be imposed for the protection and welfare of the citizens of Jacksonville, Arkansas.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE CITY COUNCIL OF THE CITY OF JACKSONVILLE, ARKANSAS, THAT:

SECTION ONE: JMC § 5.07.010 – Definitions, shall be created and read as follows:

- a) **Advertise:** To publish, display, or disseminate information and includes, but is not limited to the issuance of any card, sign, direct mail, or causing or permitting any sign or marking on or in any building or structure or in any newspaper, magazine, directory, or any announcement or display via any televised, computerized, electronic, or telephonic networks or media, including advertising through internet sites, online bulletin boards, or internet forums.
- b) **Equity Holder:** Any person who is a shareholder, partner, member, trustee, or other principal owner of the massage business, who owns ten percent (10%) or greater financial interest in the massage business, whether directly or indirectly through any number of holding entities, partnerships, or trusts.
- c) **Massage Therapy:** The treatment of soft tissues, which may include skin, fascia, and muscles and their dysfunctions for therapeutic purposes of establishing and maintaining good physical condition, comfort, and relief of pain. This service includes gliding, kneading, percussion, compression, vibration, friction, nerve strokes, and stretching the tissue. Massage therapy includes any of the following procedures:
 - 1) Massage therapy techniques and procedures, either hands-on or with mechanical devices;
 - 2) Therapeutic application of oils, herbal or chemical preparations, lubricants, nonprescription creams, lotions, scrubs, powders, and other spa services;
 - 3) Therapeutic application of hot or cold packs;
 - 4) Hydrotherapy techniques;
 - 5) Heliotherapy; which may include mechanical devices, heat lamps, and other devices;
 - 6) Electrotherapy;
 - 7) Any hands-on bodywork techniques and procedures rising to the level of the techniques and procedures intended to be regulated under Arkansas State Law;
 - 8) Cupping therapy
 - 9) **Massage Therapist:** Any massage practitioner as defined in Arkansas Code Annotated 17-86-102.

- d) Specified sexual activity: As defined under JMC §5.06.020 (k)
- e) Specified anatomical area: As defined under JMC §5.06.020 (l)

SECTION TWO: JMC § 5.07.020 –Massage Business License Required; Transferability, shall be created to read as follows:

- a) Upon passage, it shall be unlawful for any person to operate a massage business without possessing a valid massage business license for each premises where the massage business operates.
- b) Each massage business license shall specify the name under which the licensee will operate, the address of the principal place of business, the expiration date, the number of the license, and any other information the City Clerk deems necessary.
- c) The massage business shall display the license in a conspicuous place readily visible to persons entering the licensed premises.

SECTION THREE: JMC § 5.07.030 – State Licensure Requirements, shall be created to read as follows:

No City of Jacksonville Privilege Business License / Massage License shall be issued to any business, corporation, entity, individual, partnership, and/or professional who has not met the requirements for certification or business operation set forth by the Arkansas State Board of Health, Arkansas Massage Therapy Laws or Arkansas Rules for Massage Therapy. A copy of the massage therapist's license, master therapist's license, and/or apprentice license for employees must be provided.

SECTION FOUR: JMC § 5.07.040 – Application Requirements; Background Checks, shall be created to read as follows:

- a) In addition to the other requirements set forth in Title 5 - Business Licenses and Regulations, the application for a massage business license shall include:
 - 1) The full name and any other names under which each equity holder of the applicant is or has been known and the residence address, telephone number, and date of birth of each equity holder of the applicant;
 - 2) A description of the specific types of services to be rendered;
 - 3) Documentary evidence that the officers and managers of the applicant are at least a minimum of eighteen (18) years of age;
 - 4) Documentary evidence that the applicant has or will have possession of the premises to be licensed during the term of the license by ownership, lease, rental, or other arrangement;
 - 5) A statement identifying the zone district of the premises; and
 - 6) A detailed diagram showing the configuration of the premises to be licensed as follows:
 - i. The diagram shall be no larger than eight and one-half inches by eleven inches (8 ½ x 11);

- ii. The diagram shall include the dimensions and total square footage of the premises to be licensed but does not need to be drawn to scale;
 - iii. The diagram shall designate the use of each room or other definitive area of the premises to be licensed;
 - iv. The diagram shall show the type of control of the exterior areas of the premises to be licensed, including, without limitation, fences, walls, and exterior entry/exit points;
 - v. If the premises to be licensed consists of multiple levels, a separate diagram shall be filed for each floor
- b) Each applicant's, principal's, managing agents, and equity holder's criminal history, any conviction or guilty plea to a charge based on dishonesty, fraud, deceit, violence, weapons, substance abuse or narcotics, sexual misconduct or prostitution related misconduct of any kind, regardless of the jurisdiction in which the act was committed, may be considered in a decision to grant, renew, revoke, or suspend the license.
- c) In the event the licensing official takes into consideration criminal history, the licensing official shall also consider any information provided by the applicant regarding criminal history, evidence of mitigating factors, rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for license renewal.

SECTION FIVE: JMC § 5.07.050 – Fees and Terms, shall be created to read as follows:

Fees and terms are established under JMC §5.04.100 and §5.04.110

SECTION SIX: JMC § 5.07.060 –Exemptions, shall be created to read as follows:

- a) Public and private schools accredited by the State Board of Education;
- b) Facilities providing massage services by employees of any governmental entity;
- c) Training rooms of a recognized professional or amateur sports organization, dance troupe, athletic club, school district, or other such athletic organization;
- d) Offices, clinics, and other facilities used by state-licensed health care professionals, other than massage therapists, in the ordinary course of their health care profession. For purposes of this section, a licensed massage therapist may provide massage services in a facility that primarily is used for state-licensed health care services other than massage without obtaining a massage business license;
- e) Barber shops, beauty salons, and other facilities at which barbers and cosmetologists licensed by the state provide massage services in the ordinary course of their professions.

SECTION SEVEN: JMC § 5.07.070 –Denial, Suspension, or Revocation of License, shall be created to read as follows:

In addition to the grounds set forth in Title 5 – Business Licenses and Regulations, a massage business license may be denied, suspended, or revoked if the applicant, managing agent, principal, or equity holder of the applicant:

- a) Has made a willful misrepresentation in applying for and obtaining a license;
- b) Has previously been denied a license under this part or has had a license issued under this part suspended or revoked;
- c) Has had a massage business license/permit revoked or suspended in another jurisdiction;
- d) Applicant's operation of a massage business would be a threat to the public health or safety;
- e) Has violated any provision of this part or any other applicable law;
- f) Has failed within the required timeframe to remit payment for the City for any fees incurred pursuant to this Code;
- g) Has been convicted of operating with a license under this part or performing any act for which a license is required under this part; or
- h) Has violated any provisions of this General Licensing Code;
- i) The suspension or revocation of a massage business license shall be subject the provisions of JMC §5.04.140

SECTION EIGHT: JMC § 5.07.080 –Unlawful Acts and Violations, shall be created to read as follows:

- a) It shall be unlawful for any person to:
 - 1) Directly or indirectly, personally or through an agent or employee, conduct any massage business, or to use in connection with the massage business on premises, in whole or in part, without possessing a valid massage business license for each premises the massage business operates;
 - 2) Make a willful misrepresentation in applying for or obtaining a massage business license;
 - 3) Flee, or attempt to flee, or elude inspection pursuant to this part;
- b) It shall be unlawful for any principal or managing agent of a massage business to:
 - 1) Employ any person as a massage therapist or to allow anyone person to work as a massage therapist in a massage business who does not possess both a valid government-issued, photographic identity card and a massage therapist license.
 - 2) Encourage, permit, or tolerate any employee or client of the massage business to engage in specified sexual activities or to expose the employee's specified anatomical areas within the premises.
 - 3) Fail to keep records as required by this part or fail to permit inspection of records as required by this part.
 - 4) Fail to immediately report to law enforcement any specified sexual activities in a massage business between an employee of the massage business and a client.
 - 5) Permit the massage business premises to be used for living or sleeping quarters for any person when not otherwise permitted by this Code.
- c) It shall be unlawful for any massage business to advertise specified sexual activities, prostitution, escort services, or other sexual services or to employ language in the text of any advertising or any images that would reasonably suggest

to prospective client that any specified sexual activities are available through the massage business or at the licensed premises.

- d) It shall be unlawful for any massage business to operate between the hours of eight o'clock (8:00) P.M. and eight o'clock (8:00) A.M., inclusive.
- e) Each principal, managing agent, and equity holder shall not violate, or permit to be violated any local, State, or Federal law based on acts of dishonesty, fraud, deceit, violence, weapons, substance abuse or narcotics, sexual misconduct, prostitution related misconduct of any kind, or human trafficking laws, whether or not the acts were committed in the State of Arkansas

SECTION NINE: JMC § 5.07.090 –Records and Inspections; Enforcement, shall be created to read as follows:

- a) The provisions of this Chapter shall be enforced by the Jacksonville Code Enforcement Office and the Jacksonville Police Department.
- b) The managing agents and principals shall keep and maintain records for all employees and independent contractors of the massage business during the term of the person's employment and for at least three (3) years thereafter. These records shall, at a minimum, contain the following: name, age, current address and telephone numbers, description of the duties and responsibilities of the person, a copy of the valid government-issued identification card of the person, and any other information reasonably required by the City Clerk's Office. The records shall include a copy of the massage therapist license held by any massage therapist working on the premises.
- c) The Code Enforcement Office and Jacksonville Police Department may inspect each licensed massage business to determine compliance with the provisions of this part. The Code Enforcement Office or Jacksonville Police Department shall inspect the premises and records at any reasonable time during the hours of operation or apparent activity. The licensed premises, including any places of storage, shall be open and made immediately available for inspection. Where any part of the licensed premises consists of a locked area, the area shall be unlocked and made available for inspection without delay upon request of the Code Enforcement Office or Jacksonville Police Department.

SECTION TEN: JMC § 5.07.100 –Notice of Unlicensed Massage Business, shall be created to read as follows:

Where the Code Enforcement Office or the Jacksonville Police Department determines that an unlicensed premises is being used to operate a massage business, in addition to any other notice provided for in Title 5 – Business Licenses and Regulations, the Code Enforcement Office or the Jacksonville Police Department may provide notice of the requirements of this part to the owner and occupants by affixing a notice to the principal entrance of the unlicensed premises and by mailing notice to the property owner as their address appears on the tax records of the County Assessor.

SECTION ELEVEN: All Ordinances, parts of Ordinances, or previous actions taken by said Council in conflict herewith are hereby repealed to the extent of such conflict.

SECTION TWELVE: This Ordinance, necessary for the continued efficient delivery of public services and for the benefit, health, safety, and welfare of the citizens of Jacksonville, should be implemented immediately to all applicable current and future businesses. Therefore, an emergency is hereby declared, and this Ordinance shall be in force and effect from and after its date of passage.

APPROVED AND ADOPTED THIS 4th DAY OF APRIL, 2024.

CITY OF JACKSONVILLE, ARKANSAS

JEFF ELMORE, MAYOR

ATTEST:

SUSAN DAVITT, CITY CLERK

APPROVED AS TO FORM:

STEPHANIE FRIEDMAN, CITY ATTORNEY