

ORDINANCE NO. 4793

AN ORDINANCE ENACTED BY THE NAMPA CITY COUNCIL ADDING TITLE 5, CHAPTER 7, SECTIONS 5-7-1 THROUGH 5-7-15 OF THE NAMPA CITY CODE, RELATING TO THE LICENSING OF MASSAGE ESTABLISHMENTS; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; AND REPEALING ALL ORDINANCES, RESOLUTIONS, ORDERS AND PARTS THEREOF, IN CONFLICT HEREWITH.

BE IT ORDAINED BY THE MAYOR AND THE COUNCIL OF THE CITY OF NAMPA, CANYON COUNTY, STATE OF IDAHO;

SECTION 1. That Title 5, Chapter 7, Sections 5-7-1 through 5-7-14, pertaining to the licensing of massage establishments, be added as follows:

**Chapter 7
MASSAGE ESTABLISHMENT LICENSING**

- 5-7-1: LEGAL AUTHORITY
- 5-7-2: PURPOSE
- 5-7-3: SCOPE
- 5-7-4: GENERAL LICENSING PROVISIONS APPLICABLE
- 5-7-5: DEFINITIONS
- 5-7-6: LICENSE REQUIRED
- 5-7-7: EXEMPTIONS
- 5-7-8: APPLICATION AND RENEWAL INFORMATION
- 5-7-9: QUALIFICATIONS AND RESPONSIBILITIES
- 5-7-10: REVOCATION AND SUSPENSION
- 5-7-11: RIGHT OF REVIEW
- 5-7-12: OPERATING AND SANITARY REQUIREMENTS
- 5-7-13: ILLEGAL ACTS
- 5-7-14: VIOLATIONS AND PENALTY
- 5-7-15: FEES

5-7-1: LEGAL AUTHORITY

Pursuant to Idaho Code sections 50-301 and 50-307, the Idaho legislature has authorized the City to adopt and enforce ordinances, rules and regulations governing standards and procedures for licensing persons who engage in or operate a trade or business within the City.

5-7-2: PURPOSE

A. Specified: The City's purpose in adopting this chapter is to promote the public health, safety and welfare of its citizens by regulating businesses, owners, managers, and employees within the massage industry without restraining, burdening or over regulating the businesses or occupations of those who operate within the confines of the licensing scheme and all other applicable laws and regulations. The City finds that massage establishments are sometimes used for unlawful purposes regardless of the number of self-regulating businesses and thus strict compliance with the requirements of this chapter and those regulations found in Title 5, Chapter 1.

B. Non-liability of City: The issuance of a license pursuant to this chapter does not constitute a representation of any affirmance to any person who transacts business with a person licensed pursuant to this chapter that said licensee is free from risk. The City shall not be liable for, nor shall a cause of action exist for, any loss or damage based upon the failure of any person licensed under this chapter to meet the standard contained in this chapter.

5-7-3: SCOPE

This chapter establishes minimum standards and procedures for licensing owners and employees of a massage establishment and the operation of a business as a massage establishment.

5-7-4: GENERAL LICENSING PROVISIONS APPLICABLE

To the extent not inconsistent with this chapter, the provisions set forth in Title 5, Chapter 1, shall apply with full force and effect to all provisions and sections of this chapter.

5-7-5: DEFINITIONS

For the purposes of this chapter, the following terms, phrases, words and derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. Words used throughout this chapter, but not defined herein or in Title 5, Chapter 1, shall have their plain, ordinary and common meaning. Words in any gender shall apply to the feminine, masculine and neuter genders.

APPLICATION: The document completed and submitted by an applicant for a City massage establishment license, including all required supporting information and documentation.

CLIENT: A person who receives a massage, massage therapy or any other service within a massage establishment.

EMPLOYEE: Any person employed by a massage establishment who is not an owner, a manager or a massage therapist.

MANAGER: Any person who has management control over any aspect of the operation of a massage establishment, including managing employees or setting operational policies. A manager may or may not also play other roles within the massage establishment such as Owner or Employee.

MASSAGE ESTABLISHMENT:

A. A fixed place of business of two (2) or more individuals, or of a partnership, firm, association, corporation or business entity, or any other combination of individuals, which:

1. Uses the word "massage" in any solicitation or advertisement; or
2. Engages in, conducts, carries on or permits massage or massage therapy to be conducted or carried on, for money or other consideration.

B. That portion of a premises operated as above in which massage or massage therapy is ancillary to the primary business.

MASSAGE THERAPIST: As defined in Idaho Code Section 54-4002 as a person who is licensed under this chapter and who engages in the practice of massage therapy.

MASSAGE THERAPY (MASSAGE OR THE PRACTICE OF MASSAGE THERAPY):

The practice of massage therapy is defined in Idaho Code title 54, chapter 40. By way of illustration, the definition includes any method of manual manipulation of, pressure on, or friction against, the external part of the body of another by rubbing, stroking, kneading, slapping, pounding, tapping, vibrating or other stimulation with the hands or other body parts, or with the aid of mechanical or electrical devices, with or without supplementary aids, such as oils, rubbing alcohol, liniments, antiseptics, powders, creams, lotions, ointments or other similar preparations commonly used in the practice of massage. For purposes of this chapter, the terms "massage" and "massage therapy" are included in this definition and may be used interchangeably.

OWNER: A person having any ownership interest in a massage establishment regardless of its legal form, which may include being a sole proprietor, a shareholder of a corporation, or an owner of membership units in a limited liability company.

5-7-6: LICENSE REQUIRED

A. Application: Application for a license shall be made to the City Clerk's Office as set forth in Chapter 1 of this title. No owner or manager of a massage establishment shall permit or allow any person to engage in, or attempt to engage in, the practice of massage therapy within a massage establishment unless the massage establishment:

1. Possesses a valid City massage establishment license; or
2. Is exempted by this Code from the massage establishment license requirement.

5-7-7: EXEMPTIONS

A. The following are exempt from the massage establishment license requirement:

1. Hospitals, residential care facilities and assisted living facilities licensed by the State;
2. Public and private secondary schools or accredited colleges and universities eligible to disburse Federal financial aid, and the athletic programs of such schools, colleges and universities;
3. Sports venues at which massage may be conducted on the members of professional sports franchises by athletic trainers employed by professional sports franchises. Where a sports venue shares a structure with another business or businesses, such as a hotel or motel, this exemption shall not apply to any other existing business within the structure where massage or massage therapy may take place;
4. The business locations of persons currently certified or licensed in or by the State in medicine, surgery, osteopathy, physical therapy, chiropractic, podiatry, nursing or kinesiology;
5. The business locations in which barbers and cosmetologists, currently licensed by the State, practice massage limited to the neck, face, scalp, hair, hands or feet, when such massage is conducted in conjunction with a cosmetic service, such as a haircut or styling, shave, manicure or pedicure;
6. A massage establishment in which only one massage therapist is employed or practices massage or massage therapy. Any massage establishment having two (2) or more massage therapists employed or practicing massage or massage therapy shall not qualify for this exemption.

5-7-8: APPLICATION AND RENEWAL INFORMATION

In addition to the requirements found in title 5, chapter 1, every application for a new or renewed massage establishment license shall include:

A. Certificate of Occupancy: A copy of the Certificate of Occupancy listing the current tenant and building owner, issued by the Nampa Building Safety Department, for the tenant space or building in which the massage establishment will operate; and

B. Information; Documents: The following information and documents for every owner and manager of the massage establishment shall be provided:

1. Full legal name;
2. A photocopy of valid State issued photo identification;
3. Employment history for the five (5) years preceding the application date; and

4. A photocopy of the massage therapist license issued by the State for every person who performs or will perform massage in the massage establishment during the term of the massage establishment license.

C. Investigation of Applicant: Upon receipt of an application for any license under this chapter, the application shall be referred to the Nampa Police Department which shall conduct an investigation to determine the suitability of the applicant to be licensed. The investigation shall require an applicant to provide information and fingerprints necessary to obtain criminal history information from the Idaho State Police and the Federal Bureau of Investigation pursuant to Idaho Code section 67-3008 and congressional enactment public law 92544. The Nampa Police Department shall submit a set of fingerprints obtained from the applicant and the required fees to the Idaho State Police Bureau of Criminal Identification for a criminal records check of state and national databases. The submission of fingerprints and information required by this section shall be on forms prescribed by the Idaho State Police. The Nampa Police Department is authorized to receive criminal history information from the Idaho State Police and from the Federal Bureau of Investigation for the purpose of evaluating the fitness of an applicant for licensure. As required by state and federal law, further dissemination or other use of the criminal history information is prohibited. The applicant shall pay, in advance, the fees required by the Idaho State Police Bureau of Criminal Identification for the criminal records check.

5-7-9: QUALIFICATIONS AND RESPONSIBILITIES

A. Qualifications: No massage establishment license shall be issued to any applicant if any person required to be on the application:

1. Is not over 18 years of age.
2. Has been, within five years prior to the date of making application for such license, convicted of, paid any fine, placed on probation or is currently on probation or parole, received a deferred sentence, received a withheld judgment, sentenced to confinement (including options in lieu of confinement), or suffered the forfeiture of a bond for a felony involving the use of threat of violence against another, or any felony involving the sexual enticement of minors.
3. Has been, within five years prior to the date of making application for such license, convicted of, paid any fine, placed on probation or is currently on probation or parole, received a deferred sentence, received a withheld judgment, or sentenced to confinement (including options in lieu of confinement), or suffered the forfeiture of a bond for any misdemeanor, involving:
 - a. The use of force against the person or property of another;
 - b. The threat of force against the persons of another;
 - c. Theft or larceny;
 - d. Stalking, telephone harassment, or violations of protection orders or no contact orders;
 - e. The use, possession or sale of illicit drugs or possession of paraphernalia;

- f. Contributing to the delinquency of a minor;
- g. Possession of a concealed weapon; or
- h. Illicit sexual activity.

4. Has an outstanding warrant at the time of such application.

5. Has had a similar license revoked by the city or any other city of this state or of the United States within the preceding five years.

6. Fails or refuses to provide the information or fingerprints requested during the investigative portion.

7. Is not the bona fide owner or lessee of the premises within which the massage establishment is to be operated.

B. Violations: A massage establishment shall not be issued a license, and an existing license shall be revoked pursuant to the revocation authority set forth in this chapter, if the operation of the massage establishment is found to violate any existing law, ordinance or regulation, including, but not limited to, building, zoning and health regulations. Issuance of a massage establishment license does not exempt any person from obedience to any other law, ordinance or regulation.

5-7-10: REVOCATION AND SUSPENSION

A. License Suspension:

1. Every licensee who violates any provision of the Idaho Code pertaining to massage therapists or massage establishments, or any provision of this Code, in addition to the criminal or civil penalties prescribed by law for such violation, shall have their massage establishment license suspended for a period of one hundred eighty (180) days.

2. Every license suspension shall be effective at twelve o'clock (12:00) midnight on the third day following the date written notice of the suspension is sent to the licensee.

B. License Revocation:

1. A third license suspension within three (3) years shall be deemed a revocation.

2. Every license revocation shall be effective at twelve o'clock (12:00) midnight on the third day following the date written notice is sent to the licensee.

5-7-11: RIGHT OF REVIEW

Every applicant who, upon application, is denied a license governed by this chapter, or who has a license governed by this chapter suspended or revoked, shall have a right of review. Review procedures shall follow those set forth in title 1, chapter 1, article 10.

5-7-12: OPERATING AND SANITARY REQUIREMENTS

A. Standards and Requirements: Every massage establishment shall be constructed, operated, and maintained in compliance with the following minimum standards and requirements:

1. State License Required:

a. No manager or owner shall employ or allow any person to perform massage or massage therapy in a massage establishment under their management or ownership, unless such person possesses a valid massage therapy license issued by the State or is specifically exempted in State Code from the requirement to possess a State massage therapist license.

2. Physical Facilities:

a. All massage therapy in a massage establishment shall be in a room, cubicle or area dedicated to that purpose.

b. Steam rooms, shower compartments, steam compartments, tub compartments, toilet rooms and adjacent exit areas shall have smooth, nonabsorbent and easily cleanable floors and walls.

c. Floors of wet and dry heat rooms shall be adequately sloped to one or more floor drains properly connected to an approved sewer system, except that dry heat rooms with wooden floors need not be provided with sloped floors and floor drains.

d. A source of water, compliant with the Idaho State Plumbing Code (as adopted and as amended by title 4 chapter 3 of this Code) shall be available within the immediate area of the dry and wet heat rooms to facilitate cleaning.

e. The premises shall be equipped with facilities and equipment for disinfecting or sanitizing non-disposable instruments and materials used to administer massages.

f. Massage tables, exercise tables and benches shall have easily cleanable upholstery or other approved material covering the entire surface that may come into contact with a client during a massage.

g. Pools, tubs and similar equipment designed for multiple use without the water being changed, shall comply with all State and other applicable laws. The water contained in tubs, baths and similar equipment designed for a single use shall be emptied after each use, thoroughly cleaned and properly sanitized prior to the next use.

h. No massage establishment shall be used as a shelter or living quarters for any person. The owner and family members of a massage establishment operated as a home occupation, title 10, chapter 1, article 10 of this Code, are exempt from this prohibition. If a massage establishment is located within, but is ancillary to, a

business, such as a hotel or motel, this prohibition shall apply only to the areas designed, designated or used as a massage establishment.

i. Restroom and toilet facilities shall be provided in a convenient location separate from a room in which massage is performed, to provide privacy.

j. Each hand washing facility shall include hot and cold running water, soap or detergent, and sanitary single service towels or an air hand dryer. A common towel shall not be provided or used for hand drying.

k. No room, cubicle or area that is designed to accommodate the practice of massage or massage therapy shall have a door that is equipped with a locking mechanism³.

3. Required Building Requirements, Building Permits, and Certificate of Occupancy:

a. Building Requirements:

i. In addition to the physical requirements of the tenant space listing in 5-7-11; A; 1 Physical Requirements; the establishment shall be subject to the requirements of Title 4 – Building Regulations, including, but not limited to, adopted property maintenance code; and State of Idaho adopted building, fire, plumbing, mechanical, and electrical codes and related standards.

ii. Residential occupancies are prohibited in massage establishment business occupancies.

iii. The main accessible entry to a massage establishment shall remain unlocked during business hours with a required sign, posted at the top of the door header, stating: “This door to remain unlocked during business hours”

b. Building Permits:

i. A Commercial Tenant Improvement Permit or New Commercial Building Permit shall be required for all Massage Establishments prior to issuance of the initial Certificate of Occupancy.

ii. A Tenant Improvement Permit application shall be required for each Certificate of Occupancy where there is change of tenant(s) and/or building owners.

iii. All building and sub-contractor permit conditions must be satisfied prior to issuance of a Certificate of Occupancy.

c. Certificate of Occupancy:

i. A Certificate of Occupancy, issued by the Nampa Building Safety Department, shall be required prior to the occupancy of the tenant or building space for a new establishment.

ii. A revised Certificate of Occupancy shall be required for any change of tenant (s) or owner(s) of the establishment.

4. Cleaning and Maintenance:

a. Every appliance, exercise table and every other piece of equipment, furniture or apparatus within a massage establishment shall be kept clean, in good repair and maintained in a sanitary condition.

b. Wet and dry heat rooms, steam or vapor rooms, or steam or vapor cabinets, shower compartments and toilet facilities and rooms shall be thoroughly cleaned after each day the establishment is in operation.

c. Every massage establishment shall provide clients with clean, sanitized sheets, towels or other linens. No common use of sheets, towels or other linens shall be permitted.

d. Every instrument, apparatus, equipment or appliance designed to be reused shall be sanitized or disinfected after each use.

5. Owners, Managers, and Employees:

a. Every manager, massage therapist and employee shall maintain a high degree of personal hygiene by wearing clean clothes and conduct the business and operations of the massage establishment in a sanitary and hygienic manner.

b. Every massage therapist providing services in a massage establishment shall wash their hands thoroughly after going to the bathroom, smoking or eating, and before and after administering a massage or treatment on each client, and as often as necessary to remove soil and contamination during a massage therapy or treatment session.

c. No massage therapist shall administer a massage or give treatment if he or she knows, or should know, that he or she has any contagious or communicable disease.

6. Hours of Operation: Every massage establishment shall be closed for business between the hours of ten o'clock (10:00) P.M. and seven o'clock (7:00) A.M.

B. Required Records:

1. Every massage establishment shall keep and maintain:

- a. A book containing the names, dates of birth and a legible photocopy of the State massage license of every massage therapist employed by or contracting with the massage establishment; and
- b. A menu of all services available at the massage establishment, including the price for each service, which shall be posted in plain view of clients; and
- c. A log, including the date, time and type of massage or massage therapy service performed, the amount of money or other payment received from the client, including the amount of tip or gratuity.
- d. A Certificate of Occupancy, issued by the Nampa Building Safety Department, listing the current Tenant(s) and Building Owner(s).
- e. Current fire extinguisher inspection tag(s) and the annual inspection reports for any fire alarm and fire sprinkler systems.

2. Every document and record required by this chapter shall be dated and kept at the massage establishment for a minimum period of one year from the date of the last record contained therein, and on or off the premises for the period required by State law or the rules, code of ethics or standards of practice of the State Board of Massage Therapy.

3. Every owner, manager, massage therapist and employee shall immediately present the records required herein for inspection or review upon request of any law enforcement officer or City Official.

C. Insurance Required:

1. Every owner shall possess a policy of insurance that provides general liability coverage in the amount of one million dollars (\$1,000,000.00) for all foreseeable risks that may arise from the operation of a massage establishment and from the practice of massage therapy. Said policy shall be issued by an insurance carrier duly authorized to do business in the State, and a certificate of insurance shall accompany each application, specifying the City as the certificate holder.

2. Every massage therapist performing massage or massage therapy at the massage establishment shall be covered by the policy of insurance required by this section.

3. Every owner shall maintain, at the massage establishment, documentary proof of compliance with the insurance requirements contained in this section.

D. Inspections:

1. A City Official may, at any time during business hours and as frequently as reasonably necessary to ensure compliance, inspect any massage establishment.

2. Every massage establishment shall obtain and receive every other inspection required by law, including, but not limited to, inspections performed by the Nampa Fire District, the Building Safety Department, the Southwest District Health Department, and any other department or agency authorized to conduct a required inspection.

5-7-13: ILLEGAL ACTS

In addition to the illegal acts and omissions proscribed throughout this chapter, each of the following acts or omissions shall be unlawful:

A. Licenses Required: No owner or manager of a massage establishment shall permit or allow any person to engage in, or attempt to engage in, the practice of massage therapy within the massage establishment unless the massage establishment:

1. Possesses a valid City massage establishment license; or
2. Is exempted by this Code from the massage establishment license requirement.

B. Licenses Generally:

1. Every massage establishment license issued pursuant to this chapter shall remain the property of the City, and shall be surrendered to the City Clerk within seventy-two (72) hours of suspension, revocation or expiration, or immediately upon demand by a designated agent of the City.
2. No person shall have in their possession a massage establishment license issued pursuant to this chapter that has been denied, suspended, revoked or that has expired.
3. No massage establishment license shall be transferred.
4. Every owner and manager shall notify the City Clerk in writing within two (2) business days upon the change of any of the information provided in the massage establishment license application submitted to the City Clerk.
5. Every applicant, massage therapist, manager and owner shall continue to have and maintain all the qualifications, and none of the disqualifications, for licensure pursuant to this chapter.
6. Every applicant, massage therapist, manager and owner shall notify the City Clerk within two (2) business days in the event any person whose name appears on an application for a massage establishment license loses any qualification or gains any disqualification for licensure pursuant to this chapter.
7. Every massage establishment license and State issued massage therapist license shall be posted in the massage establishment at all times, and shall be in full and clear view of clients and potential clients.

8. Every owner, manager and massage therapist, upon request of any law enforcement officer or City Official, or any client, shall immediately present all required licenses for inspection.

9. No person with any license governed by this chapter that has expired or has been suspended or revoked shall engage in the practice of massage or massage therapy, or attempt to practice massage or massage therapy in a massage establishment.

10. No person shall operate or run a massage establishment with a suspended or revoked license.

C. Construction, Operation and Maintenance of Establishments:

1. Every massage establishment shall comply with the minimum operating and sanitary requirements of section 5-7-12 of this chapter.

2. The owner and manager of every massage establishment shall notify the City Clerk in writing within two (2) business days of every change in ownership or management of the massage establishment.

3. The owner and manager of every massage establishment shall notify the City Clerk in writing within two (2) business days of every change in massage therapists employed by, or working at, the massage establishment, whether such change is by new or renewed employment, termination or discharge, transfer or other employment change.

4. No living or sleeping in massage establishment.

a. No person shall use a massage establishment as housing, living quarters or sleeping quarters.

b. No owner or manager shall permit or allow a massage establishment to be used as housing, living quarters or sleeping quarters by any person.

c. Home occupations, as defined in subsection 10-1-10 of this Code, are exempted from this prohibition.

D. Required Records:

1. No owner, manager, massage therapist or employee shall fail to keep the records required by this chapter.

2. No owner, manager, massage therapist or employee shall refuse or fail to immediately present all records required to be kept by this chapter to a City Official upon request.

E. Inspections:

1. Every massage establishment shall obtain and receive every inspection required by law, including, but not limited to, inspections performed by the Nampa Fire District, the building inspector, the Southwest District Health Department and any other department or agency authorized to conduct a required inspection.

2. No owner, manager, massage therapist or employee shall fail to immediately grant full massage establishment access to a City Official or any other person authorized or required by law to inspect the massage establishment.

F. Other Unlawful Practices:

1. No owner, manager, massage therapist or employee shall allow or permit any person under the age of eighteen (18) years to come into or remain in any massage establishment without parental approval.

2. No owner, manager, massage therapist or employee shall sell, give, dispense, provide or keep, or cause or permit to be sold, given, dispensed, provided or kept, any alcoholic beverage or liquor within any massage establishment

3. No owner, manager, massage therapist or employee shall initiate or engage in any sexual contact or sexual act in any massage establishment.

4. No owner, manager, massage therapist or employee shall keep, or allow to be kept, within any massage establishment any item known as or commonly used as a marital or sexual aid, including, but not limited to, any contraceptive item or device, vaginal or anal lubricant, or any sex toy.

5. No owner, manager, massage therapist or employee shall solicit, initiate, engage in, permit or allow any act that violates Idaho Code section 54-4001 et seq.

5-7-14: VIOLATIONS AND PENALTY

A. Violations: Every violation of a provision of this chapter shall be a misdemeanor. (Ord. 17-13, 6-18-2013)

B. Misdemeanor Criminal Penalty: Every misdemeanor violation of the provisions of this chapter shall be subject to penalty as provided in section 1-1-7(A) of this Code.

C. Administrative License Penalty: In addition to the misdemeanor criminal penalties provided by this section, every person who violates any provision of this chapter shall be subject to the administrative license penalties of license denial, license revocation or license suspension, as set forth in this chapter and in title 1, chapter 1, article 8.

5-7-15: FEES

License fees are established by resolution as specified in Nampa City Code Section 5-1-4.

SECTION 2. This ordinance shall be in full force and effect from and after its passage, approval, and publication, according to law.

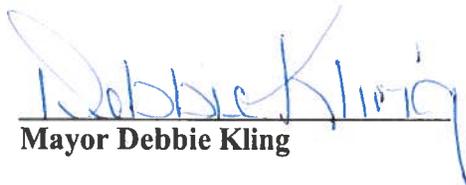
SECTION 3. This ordinance is hereby declared to be severable. If any portion of this ordinance is declared invalid by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect and shall be read to carry out the purposes of the ordinance before the declaration of partial invalidity.

SECTION 4. All ordinances, resolutions, orders and parts thereof in conflict herewith are repealed.

PASSED BY THE COUNCIL OF THE CITY OF NAMPA, IDAHO, THIS 4TH DAY OF MARCH 2024.

APPROVED BY THE MAYOR OF THE CITY OF NAMPA, IDAHO, THIS 4TH DAY OF MARCH 2024.

Attest:



Mayor Debbie Kling



City Clerk

State of Idaho)

Canyon County)

On this 4th day of March 2024, before me, the undersigned, a Notary Public in and for said State, personally appeared Debbie Kling known to be the Mayor and Charlene Tim known to be the City Clerk of the City of Nampa, a municipal corporation, who executed the foregoing instrument.

In Witness Thereof, I have hereunto set my hand and affixed by official seal, the day and year in this certificate first above written.



Residing at: Nampa, Canyon County, Idaho
My Commission Expires: 9-11-2029

