

ORDINANCE NO. 10-09

**AN ORDINANCE AMENDING CHAPTER 8 OF  
THE NEW HOPE CITY CODE BY ESTABLISHING  
LICENSE REGULATIONS FOR THERAPEUTIC MASSAGE**

The City Council of the City of New Hope ordains:

Section 1. Section 8-34 “**Therapeutic Massage**” of the New Hope City Code is hereby added to read as follows:

**Sec. 8-34. Therapeutic Massage**

(a) *Findings.* It is found and determined that:

- (1) persons who have recognized and standardized training in therapeutic massage, health and hygiene provide a legitimate and necessary service to the general public;
- (2) health and sanitation regulations governing therapeutic massage enterprises and massage therapists will minimize the risk of the spread of communicable diseases and promote health and sanitation;
- (3) license qualifications for therapeutic massage enterprises and massage therapists will minimize the risk that such businesses and persons may facilitate prostitution and other criminal activity in the city; and
- (4) massage services provided by persons without recognized and standardized training in massage can endanger citizens by facilitating the spread of communicable diseases, by exposing citizens to unhealthy and unsanitary conditions, and by increasing the risk of personal injury.

(b) *Definitions.* The terms defined in this section have the meanings given them.

- (1) “Clean” means the absence of dirt, grease, rubbish, garbage and other offensive, unsightly or extraneous matter.
- (2) “In good repair” means free of corrosion, breaks, cracks, chips, pitting, excessive wear and tear, leaks, obstructions and similar defects.
- (3) “Massage” means the rubbing, stroking, kneading, tapping or rolling of the body of another person with the hands for the purpose of physical fitness, health-care referral, relaxation and for no other purpose.
- (4) “Operate” means to own, manage or conduct, or to have control, charge or custody over.

- (5) “Therapeutic massage enterprise” means a place of business providing massage services to the public for consideration: the term does not include a hospital, sanitarium, rest home, nursing home, boarding home or other institution for the hospitalization or care of other human beings duly licensed under the provisions of Minnesota Statutes, Sections 144.50 through 144.69.
- (6) “Therapeutic massage therapist” means a person who practices or administers massage to the public for consideration.
- (7) “In the city” means physical presence as well as telephone referrals such as phone-a-massage operations in which the business premises, although not physically located within the city, serves as a point of assignment of employees who respond to requests for services from in the city.

(c) License required.

- (1) *Therapeutic massage enterprise.* It is unlawful to operate, offer, engage in or carry on massage services in the city without a therapeutic massage enterprise license.
- (2) *Therapeutic massage therapist license.* It is unlawful to practice, administer or provide massage services in the city without a therapeutic massage therapist license.

(d) *Exemptions.* A therapeutic massage enterprise license or massage therapist license is not required for the following persons and places:

- (1) persons licensed by the state to practice medicine, surgery, osteopathy, chiropractic, physical therapy or podiatry, provided that the massage is administered in the regular course of the medical treatment not provided as part of a separate and distinct massage business;
- (2) persons licensed by the state as beauty culturists or barbers, provided the persons do not hold themselves out as giving massage treatments and provided that massage by beauty culturists is limited to the head, hand, neck and feet and the massage by barbers is limited to the head and neck;
- (3) persons working solely under the direction and control of a person duly licensed by the state to practice medicine, surgery, osteopathy, chiropractic, physical therapy or podiatry;
- (4) places licensed or operating as a hospital, nursing home, hospice, sanitarium or group home established for hospitalization or medical care; and
- (5) athletic coaches, directors and trainers employed by public or private schools.

(e) *General rule.* The owner or operator of a licensed therapeutic massage enterprise may only employ licensed therapeutic massage therapists to provide massage services. If the owner or operator of a licensed therapeutic massage enterprise personally provides massage services as well, said owner or operator must also be licensed as a therapeutic massage therapist; however the fee for a therapeutic massage enterprise license will include the fee for the owner's or operator's therapeutic massage therapist license.

(f) *License application.*

(1) *Therapeutic massage enterprise.* The application for a therapeutic massage enterprise license must contain the following information:

a. For all applicants whether the applicant is an individual, corporation, partnership or other form of organization:

- i. the legal description of the premises to be licensed together with a plan of the area showing dimensions, location of buildings, street access and parking facilities;
- ii. the floor number, street number and rooms where the massage services are to be conducted;
- iii. whether all real estate and personal property taxes that are due and payable for the premises to be licensed have been paid, and if not, the years and amounts that are unpaid;
- iv. if the application is for premises either planned or under construction or undergoing substantial alteration, the application must be accompanied by preliminary plans showing the design of the proposed premises; if the plans for design are on file with the building inspector, no plans need be submitted;
- v. the name and street address of the business if it is to be conducted under a designation, name or style other than the name of the applicant, and a certified copy of the certificate required by Minnesota Statutes, section 333.02;
- vi. other information that the city council may require.

b. For applicants who are individuals:

- i. the name and date of birth of the applicant and applicant's residence address;

- ii. if the applicant has ever used or been known by a name other than the applicant's name, and if so, the name or names and information concerning the dates and places where used;
  - iii. residence addresses of the applicant during five years preceding the date of application;
  - iv. the type, name and location of every business or occupation the applicant has been engaged in during the preceding five years;
  - v. names and addresses of the applicant's employers for the preceding five years;
  - vi. if the applicant has ever been convicted of a felony, crime or violation of an ordinance other than a minor traffic offense; if so, the applicant must furnish information as to the time, place and offense involved in the convictions;
  - vii. if the applicant has ever been engaged in the operation of massage services; if so, the applicant must furnish information as to the name, place and length of time of the involvement in such activity.
- c. For applicants that are partnerships:
- i. the names and addresses of general and limited partners and the information concerning each general partner described in paragraph b. above;
  - ii. the managing partners must be designated, and the interest of each general and limited partner in the business must be disclosed;
  - iii. a true copy of the partnership agreement must be submitted with the application, and if the partnership is required to file a certificate as to a trade name under Minnesota Statutes, section 333.02, a certified copy of that certificate must be submitted. The license if issued will be in the name of the partnership.
- d. For applicants that are corporations:
- i. the name of the organization, and if incorporated, the state of incorporation;

- ii. a true copy of the certificate of incorporation, and, if a foreign corporation, a certificate of authority as described in Minnesota Statutes, section 303.02;
- iii. the name of the general manager, corporate officers, proprietor, and other person in charge of the premises to be licensed, and the information about those persons described in paragraph b. above;
- iv. a list of the persons who own or have a controlling interest in the corporation or organization or who are officers of the corporation or organization, together with their addresses and the information regarding such persons described in paragraph b. above.

(2) *Therapeutic massage therapist.* An application for a therapeutic massage therapist license must contain the following information:

- a. the applicant's name and address;
- b. the applicant's current employer;
- c. the applicant's date of birth and home telephone number,
- d. if the applicant has ever been convicted of a felony, crime or violation of an ordinance other than a minor traffic offense and, if so, the time, place and offense involved in the convictions;
- e. if the applicant has ever used or been known by a name other than the applicant's name, and if so, the name or names and information concerning dates and places where used;
- f. evidence that the applicant:
  - i. has current insurance coverage over \$1,000,000 for professional liability in the practice of massage;
  - ii. is affiliated with, employed by or owns a therapeutic massage enterprise licensed by the city;
  - iii. has completed 500 hours of certified therapeutic massage training from a recognized school that has been approved by the city manager; or
  - iv. has one year of experience practicing massage therapy as established by an affidavit and can document within two years of obtaining the license that the person has completed 500 hours of certified therapeutic

massage training from a recognized school; if such documentation cannot be established at the time of license renewal, the license will not be renewed and the person who received the license based upon experience may not receive a license in the future unless the person has the requisite certified hours;

- g. other information that the city council may require;
- h. the minimum requirement of massage training specified in paragraph f., clause iii and iv does not apply to a massage therapist i) employed by an establishment licensed for massage on the effective date of Ordinance No. 1 and ii) continuously employed since that date by the licensed establishment.

(g) *Application and investigation fees.* The fees for a massage enterprise or therapist license are set forth in Chapter 14 of this code. A one time non-refundable investigation fee will be charged for each license. An application for either license must be accompanied by payment in full of the required license and investigation fees.

(h) *Application verification and consideration.*

(1) *Therapeutic massage enterprise license.* The city manager must verify the information supplied on the license application and investigate the background, including the criminal background, of the applicant to assure compliance with this section, by referring the application to the chief of police or the chief's designee for a CCH Investigation. Within 90 days of receipt of a complete application and fee for a therapeutic massage enterprise license, the city manager must make a written recommendation to the city council as to issuance or nonissuance of the license. The city council may order additional investigation if it deems it necessary, but must grant or deny the application within 120 days of receipt by the city manager of the complete application and required fees.

(2) *Therapeutic massage therapist license.* The city manager must verify the information supplied on the license application and investigate the background, including the criminal background, of the applicant to assure compliance with this section, by referring the application to the chief of police or the chief's designee for a CCH Investigation. Within 90 days of receipt of a complete application and fee for a therapeutic massage therapist license, the city manager must grant or deny the application. Notice will be sent to the applicant upon a denial informing the applicant of the right to appeal to the city council within 20 days. If an appeal is properly made, the matter will be placed on the next available city council agenda.

(i) *Persons ineligible for license.*

- (1) *Therapeutic massage enterprise license.* A therapeutic massage enterprise license may not be issued to an individual who:
  - a. is under 18 years of age at the time the application is filed;
  - b. has been convicted of any crime directly related to the occupation licensed as prescribed by Minnesota Statutes, section 364.03, subdivision 2, and who has not shown competent evidence of sufficient rehabilitation and present fitness to perform the duties and responsibilities of a licensee as prescribed by Minnesota Statutes, section 364.03, subdivision 3;
  - c. is not of good moral character or repute;
  - d. is not the real party in interest of the enterprise;
  - e. has misrepresented or falsified information on the license application.
  - f. has, within one year prior to the date of the application been denied a license under this section, or any similar ordinance of any municipality of the state, or within the period has had revoked any license issued under this section, or any similar ordinance of any municipality of the state.
- (2) *Therapeutic massage therapist license.* A therapeutic massage therapist license may not be issued to a person who could not qualify for a therapeutic massage enterprise license or who is not (i) affiliated with, (ii) employed by or (iii) does not hold, a therapeutic massage enterprise license.

(j) *Locations ineligible for therapeutic massage enterprise license.*

- (1) *Delinquent taxes or assessments.* A therapeutic massage enterprise may not be licensed if the enterprise is located on property on which taxes, assessments or other financial claims to the state, county, school district or city are due and delinquent. In the event a suit has been commenced under Minnesota Statutes, sections 278.01-278.13, questioning the amount or validity of taxes, the city council may on application waive strict compliance with this provision; no waiver may be granted, however, for taxes or any portion thereof, which remain unpaid for a period exceeding one year after becoming due.
- (2) *Building and Zoning compliance.* A therapeutic massage enterprise may not be licensed if the location of such enterprise is not in conformance with Chapters 3 and 4 of this Code.

(k) *General license restrictions.*

- (1) *Posting.* A therapeutic massage enterprise license issued must be posted in a conspicuous place on the premises for which it is used. A person licensed as a

therapeutic massage therapist must have in possession a copy of the license when therapeutic massage services are being rendered.

- (2) *Area.* A therapeutic massage enterprise license is effective only for the compact and contiguous space specified in the approved license application. If the licensed premises is enlarged, altered or extended, the licensee must inform the city manager. A licensed therapeutic massage therapist may perform on-site massage at a business, public gathering, private home or other site not on the therapeutic massage enterprise premises.
- (3) *Transfer.* The license issued is for the person or the premises named on the approved license application. Transfer of a license from place to place or from person to person is not permitted.
- (4) *Coverings.* The therapist must require that the person who is receiving the massage will at all times have that person's breasts, buttocks, anus and genitals covered with non-transparent material or clothing. A therapist performing massage must have the therapist's breasts, buttocks, anus and genitals covered with a non-transparent material or clothing.
- (5) *Prohibited massage.* A therapist may not massage or offer to massage the penis or scrotum of a male person or the breasts, mons veneris, vulva, or vaginal area of a female person.

(l) *Restrictions regarding sanitation and health.*

- (1) A therapeutic massage enterprise must be equipped with adequate and conveniently located toilet rooms for the accommodation of its employees and patrons. The toilet room must be well ventilated by natural or mechanical methods and be enclosed with a door. The toilet room must be kept clean and in good repair and be fully and adequately illuminated.
- (2) A therapeutic massage enterprise must provide single-service disposal paper or clean linens to cover the table, chair, furniture or area on which the patron receives the massage. If the table, chair or furniture on which a patron receives the massage is made of material impervious to moisture, such table, chair or furniture must be sanitized after each massage.
- (3) The therapeutic massage therapist must wash the therapist's hands and arms with water and soap, anti-bacterial scrubs, alcohol or other disinfectants prior to and following each massage service performed.
- (4) Massage tables, chairs or furniture on which the patron receives the massage must have surfaces that can be readily disinfected after each massage.

- (5) Rooms in a therapeutic massage enterprise must be illuminated.
  - (6) A therapeutic massage enterprise must have a janitor's closet that provides for the storage of cleaning supplies.
  - (7) Therapeutic massage enterprises must provide adequate refuse receptacles that must be emptied as required by this code.
  - (8) Therapeutic massage enterprises must be maintained in good repair and sanitary condition.
  - (9) Therapeutic massage enterprises must comply with the requirements of the Minnesota Indoor Clean Air Act.
  - (10) A therapeutic massage enterprise must take reasonable steps to prevent the spread of infections and communicable diseases on the licensed premises.
  - (11) Massage therapists must wear clean clothing when performing massage services.
- (m) *License term; fees; renewals.* Licenses expire annually on December 31. The license fee will be prorated in 30-day increments for licenses issued after June 30. The city manager must prepare an application form for the renewal of a license requiring information that the manager determines necessary for consideration of the renewal. The renewal application must be made no later than November 30. License fees are set by Chapter 14 of this code.
- (n) *Suspension; revocation.* A license granted under this section may be suspended or revoked by the city council for the reasons and under the procedures specified in Chapter 1-4 of this code.
- (o) *Temporary therapist license.*
- (1) The city manager may issue a temporary therapeutic massage therapist license as provided in this subsection.
  - (2) A temporary massage therapist license may be issued to a person who
    - i. is qualified to hold a massage therapist license under this section;
    - ii. has completed the required application and paid the license fee at least seven days prior to the effective date of the license.
  - (3) A temporary license is effective for four consecutive days. A person may not be issued more than three temporary licenses in any period of 360 consecutive days.

(4) All other provisions of this section apply to temporary licenses.

(p) *Hours of operation.* A licensed therapeutic massage enterprise may not operate for business between the hours of 9:00 p.m. and 7:00 a.m.

Section 2. Section 14-8(28) “**Therapeutic Massage Enterprise and Therapist License Fees**” of the New Hope City Code is hereby added to read as follows:

(28) *Therapeutic massage enterprise and therapist license fee.*

a. Therapeutic massage enterprise.

1. Nonrefundable investigation fee ..... \$300.00

2. Annual license fee ..... \$200.00

b. Therapeutic massage therapist.

1. Nonrefundable investigation fee ..... \$300.00

2. Annual license fee ..... \$100.00

Section 3. Effective Date. This Ordinance shall be effective upon its passage and publication.

Dated the 26<sup>th</sup> day of July, 2010.

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Kathi Hemken, Mayor

Attest: \_\_\_\_\_  
Valerie Leone, City Clerk