

ORDINANCE NO. 7176

ORDINANCE AMENDING CHAPTER 5.56 OF THE CITY CODE OF ORDINANCES ENTITLED "MASSAGE THERAPY FACILITIES AND THE PRACTICE OF MASSAGE THERAPY".

THE CITY COUNCIL OF THE CITY OF EAU CLAIRE DO ORDAIN AS FOLLOWS:

***SECTION 1.** That Chapter 5.56 entitled "Massage Therapy Facilities and the Practice of Massage Therapy" is hereby amended to read as follows:*

5.56.010 Definitions within this chapter. A. "Massage therapy" means the science and healing art that uses manual actions and adjunctive therapies to palpate and manipulate the soft tissue of the human body in order to improve circulation, reduce tension, relieve soft tissue pain, or increase flexibility. "Massage therapy" includes determining whether manual actions and adjunctive therapies are appropriate or contraindicated, or whether a referral to another health care practitioner is appropriate. "Massage therapy" does not include making a medical, physical therapy, or chiropractic diagnosis.

B. "Massage therapy facility" means any place where any person engages in, conducts or carries on massage therapy or permits massage therapy to be engaged in, conducted or carried on. It does not include locations used for on-site massage therapy unless such locations become established, regularly-scheduled sites where space is leased by the massage therapist or where other indices of a bona fide facility exist.

C. "Client" means any person who receives massage therapy under such circumstance that it is reasonably expected that he or she will pay money or give anything of value.

D. "Massage therapist" means a person licensed by the state of Wisconsin and governed by Chapters 440 and 460 of the Wisconsin Statutes.

5.56.020 Massage therapy facility. Every massage therapy facility shall meet the following requirements:

A. Every massage therapy facility shall have restroom facilities that meet the standards prescribed by state law.

~~B. If male and female clients are to be served simultaneously, such massage therapy rooms, dressing facilities, steam rooms and sauna rooms as are provided shall be separate for male and female clients and each such separate facility or room shall be clearly marked as such.~~

~~C. Rooms in which massage therapy is to be practiced or administered shall have at least fifty square feet of clear floor area. Rooms shall have lighting capability of at least forty candlepower 10-foot candles.~~ Such rooms shall be equipped with cabinets for the storage of clean linen and chemicals and proper receptacles for the storage of soiled linen.

~~D. No stuffed or upholstered furniture shall be used for massage therapy in massage facilities. These facilities shall be equipped with massage therapy tables and/or chairs having an impervious surface or covering with a width of no more than three feet and a length of no more than eight feet. The surface of such tables shall be positioned at least two feet from the surface of the floor so as to allow for free access to the floor beneath. Such tables and/or chairs may be equipped with either non-disposable pads or coverings or disposable coverings not more than~~

~~two and one half inches thick. Non-disposable pads or coverings shall be removable, impervious and cleanable.~~

5.56.030 Massage therapy facility--Operation. Every massage therapy facility and every massage therapist shall comply with the following operating requirements. These requirements shall be prominently and publicly displayed in a conspicuous place upon every premises licensed under the provisions of this section.

~~A. Massage therapy facilities shall commence operations no earlier than six a.m., and the hours of operation shall extend no later than one minute after twelve a.m. Massage therapists shall not practice or administer massage therapy at massage therapy facilities at any time outside of the hours of operation.~~

B. Massage therapy facilities and massage therapists shall prominently and publicly display on the premises their licenses during all hours of operation.

~~C. B.~~ Massage therapy facilities shall at all times be equipped with clean sanitary towels, coverings and linens for body and feet to be used by all clients. Disposable coverings and towels shall not be used on more than one client. Soiled linens and paper towels shall be deposited in proper receptacles.

~~D. C.~~ Instruments and surfaces utilized in performing massage therapy shall not be used on more than one client unless they have been first sanitized, using disinfecting agents and methods approved by the health officer for the city. Massage therapy table and/or chair pads and reusable table and/or chair coverings shall be disinfected between each massage therapy with approved chemicals. Chemicals used during massage therapy shall be stored separately in containers clearly labeled as to contents. All chemical containers shall be stored in cabinets reserved solely for such purpose.

~~E. Massage therapy shall not be given unless clients are wearing opaque clothing fully covering their genitals and female clients are in addition wearing opaque clothing fully covering their breasts; with the expressed consent of the client, this clothing may be repositioned to accommodate specific and appropriate work on underlying musculature of the chest or abdomen, excluding the mammary glands. Where such clothing is furnished to clients by the massage therapy facility, it shall not be used by more than one client unless it has first been laundered and disinfected. Massage therapists shall be fully clothed in clean, opaque clothing.~~

F. D. Massage therapy shall not be given to clients who have open sores or other visual signs of contagion or communicable disease.

G. E. For purposes of ascertaining violations of this section and conducting routine inspections, police officers, health officers, building inspectors, and the fire chief shall have the right of entry onto the premises of any massage therapy facility during the hours such facility is open for business. If health officers observe that any massage therapist has open sores, or otherwise have reasonable grounds to believe that any massage therapist is infected with a contagious or communicable disease, they shall have the right to suspend such massage therapist from practicing or administering massage therapy until such time as he or she furnishes a doctor's certificate showing him to be free of any contagious or communicable disease.

5.56.035 On-site massage therapy. A. On-site massage therapy shall include home visits and massage therapy in public or private buildings, outside of the licensed facility. This privilege shall be available only to those massage therapists licensed under state statutes. The license must accompany the massage therapist on all site visits and the therapist must receive the

permission of and register with the person in charge of the public or private building prior to performing massage therapy. On-site massage therapy shall not be permitted at hotels or motels unless it is part of a health fair or exposition, but shall not take place in a sleeping room. Therapists may not participate in more than 6 such events in a calendar year.

B. On-site massage therapy is also regulated by the conditions set forth in this chapter.

5.56.040 Massage therapy facility--License required. No person shall carry on the business of operating a massage therapy facility at any place within the city unless a valid license is issued pursuant to the provisions of this section for each and every such place of business.

A. Application.

1. Fee. Any person desiring to obtain a license to operate a massage therapy facility shall make application to the city clerk. A fee as stated in the City of Eau Claire Fees and Licenses Schedule shall accompany the submission of the application to ~~defray~~ cover the costs of administration and investigation.

2. Contents. Any person or persons desiring a massage therapy facility license shall file a written application with the city clerk on a form to be provided by the city clerk. If the applicant is a corporation, the name of the corporation shall be set forth exactly as set forth in its articles of incorporation, together with the names and addresses of each of its officers, directors and each stockholder of the corporation. If the applicant is a partnership, the application shall set forth the name and residence address of each of the partners, including limited partners, and the application shall be verified by each partner. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply to the corporate partner. If the applicant is neither a corporation nor a partnership, the application shall set forth the full name and address of the applicant and be verified by the applicant. The application for massage therapy facility license shall set forth the proposed place of business and the facilities therefor, together with a detailed description of the nature and scope of the proposed business operation.

3. Information. In addition to the provisions of subsection 5.56.040 A.2., the following information shall be furnished concerning the applicant if an individual; concerning each individual stockholder, officer and director if the applicant is a corporation; and concerning the partners, including limited partners, if the applicant is a partnership:

a. The previous addresses, if any, for a period of one year immediately prior to the date of application and the dates of such residence;

b. The date of birth;

c. The business, occupation or employment history for the past two years immediately preceding the date of application, including, but not limited to, whether such person previously operated under a similar permit or license in another city in this or another state and whether or not such license was suspended or revoked;

d. Whether or not the individual has had a felony conviction involving a crime against morality under Chapter 944 of the Wisconsin Statutes ~~or~~ has had a felony conviction involving a crime against life and bodily security under Chapter 940 of the Wisconsin Statutes, or has had a felony conviction of crimes against children under Chapter 948 of the Wisconsin Statutes, or an offense under federal or state law that is comparable to the listed offenses, during the past five years immediately preceding application.

B. **Investigation.** Applications for licenses under this section shall be referred to the chief of police, health officer, building inspector and fire chief, ~~all of whom shall cause an~~

~~investigation to be made and report their findings to the city clerk.~~ Applicants shall cooperate with any investigation conducted pursuant to the provisions of this section and shall permit access to the proposed place of business and facilities therefor in conjunction with any such investigation.

C. **Granting of license.** Within thirty days of the receipt of an complete application, the city clerk shall either grant or deny a massage therapy facility license. The city clerk shall grant such a license if it finds:

1. The required fee has been paid;
2. The application conforms in all respects to the provisions of this section;
3. The applicant has not knowingly made a material misstatement in the application for a license;
4. The applicant has fully cooperated in the investigation of his or her application including all inspections, if applicable;
5. The massage therapy facility as proposed by the applicant would comply with all applicable laws, including but not limited to, the city's building, zoning and health regulations;
6. The applicant, if an individual, or any of the stockholders of the corporation, any officers, or directors, if the applicant is a corporation, or any of the partners, including limited partners, if the applicant is a partnership, has not been convicted of any felony crime involving dishonesty, fraud, deceit or immorality as contained in Chapters 940, 944 and 948 of the Wisconsin Statutes within five years prior to the date of application;
7. The applicant has not had a massage therapy facility license, a massage therapist license, or other similar license denied or revoked for cause by this city, the state of Wisconsin or any other state, or any other city located in or out of this state within the five years prior to the date of application;
8. The applicant, if an individual, or any of the officers and directors, if the applicant is a corporation, or any of the partners, including limited partners, if the applicant is a partnership, is at least eighteen years of age;
9. The applicant, if a corporation, is licensed to do business and in good standing in the state.
- ~~10. The massage therapy facility as proposed by the applicant would comply with the requirements of Section 5.56.020.~~
- ~~11. If massage therapy is the applicants primary business, the applicant shall provide proof of staffing of Wisconsin State licensed therapists.~~

5.56.050 State license requirement. A. No person may provide massage therapy, designate himself or herself as a massage therapist or use or assume any title or designation that represents or may tend to represent that he or she is a person licensed under this section unless they are authorized to practice and hold a valid and active state license pursuant to Chapters 440 and 460 of the Wisconsin Statutes.

5.56.055 Insurance requirements. A. No massage therapy facility license shall be issued until the applicant has furnished satisfactory proof that a public liability insurance policy is in full force and effect in a company authorized to do business in this state in minimum amounts of \$1,000,000 for any one person injured or killed and \$ 1,000,000 for the injury or

destruction of any property. These policies shall cover the operation of the therapist and/or the therapy facility.

B. No licensee shall continue to engage in the massage therapy business after the above required insurance has lapsed, expired or is otherwise not in full force and effect.

5.56.065 License. Denial--Revocation--Suspension--Appeal. Any license issued hereunder may be denied, revoked or suspended by the city clerk upon administrative determination that the license holder has failed or refused to comply with the provisions of this chapter, for disorderly or illegal conduct on the premises, or for violation of the rules, regulations, or laws related to massage therapy and the practice of massage therapy. Appeal from ~~the afore stated~~ this administrative determination shall be made to the administrative review board under the procedures specified in City Code Chapter 1.06. Appeal shall stay the contested revocation or suspension pending decision by the board.

5.56.070 Violations. It is unlawful for any person:

A. To operate a massage therapy facility without having a license as required by Section 5.56.040;

B. To act as a massage therapist without meeting all license requirements of Chapters 440 and 460 of the Wisconsin Statutes.

C. For a facility to allow or permit persons to act as massage therapists without first having a proper and valid State license.

D. To act as a massage therapist within a massage therapy facility which does not have a license as required by Section 5.56.040.

~~E. To operate a massage therapy facility as a primary business, without having a staff of State licensed massage therapists.~~

5.56.080 Prohibited conduct of massage therapists, facility operators, and clients.

~~A. It is unlawful for any massage therapist to massage the genital area of any client or the breasts of any female client, for any operator of a massage therapy facility to allow or permit such massage in such massage therapy facility, or for any client to permit such massage upon his or her body.~~

~~B. It is unlawful for any operator of a massage therapy facility or any massage therapist to violate any of the provisions of Section 5.56.030.~~

5.56.090 Penalty. Any person who violates any provisions of this chapter shall, upon conviction, be subject to a forfeiture of not exceeding five hundred dollars for each offense. Each day, or portion thereof, during which any violation continues shall be deemed to constitute a separate offense.

5.56.100 Sale or transfer. Upon the sale or transfer of any interest in a massage therapy facility, the license therefor shall be null and void. Any person desiring to continue to operate such massage therapy facility following sale or transfer shall make application therefor pursuant to this chapter.

5.56.110 Expiration of licenses and permits. All licenses or permits issued pursuant to the provisions of this chapter shall expire on the last day of June of each calendar year.

5.56.120 Exemptions. This chapter shall not apply to the following:

A. Hospitals, nursing homes, sanitariums or other health care facilities licensed under the state of Wisconsin, and physicians, surgeons, chiropractors, osteopaths or physical therapists licensed or registered to practice their respective professions under the laws of the state;

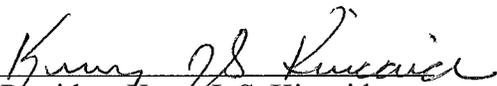
B. Barbershops, barbers, cosmetologists and beauty salons licensed under the laws of the state, provided that such massage therapy as is practiced is limited to the head and scalp;

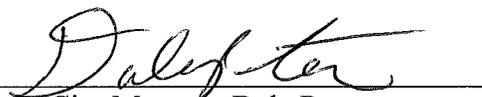
C. Coaches and trainers at accredited high schools and colleges while acting within the scope of their employment;

D. Trainers of any amateur, semiprofessional or professional athlete or athletic team while acting within the scope of their employment;

~~E. Reflexologists, practicing the science of reflexology; or~~

~~F. Polarity therapists, practicing the science of polarity.~~

(SEAL) 
President Kerry J. S. Kincaid

(SEAL) 
City Manager Dale Peters

(ATTESTED) 
City Clerk Donna A. Austad

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