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CITY OF LYNNWOOD

ORDINANCE NO. 1833

AN ORDINANCE ADDING A NEW CHAPTER TO THE LYNNWOOD MUNICIPAL CODE LICENSING AND REGULATING THE PRACTICE OF MASSAGE.

WHEREAS, pursuant to recent State legislation, most of the existing provisions of Chapter 5.52 entitled "*Public Bathhouses and Massage Parlors*" have been repealed;

WHEREAS, regulation of the practice of massage is necessary in the interest of public health, safety, welfare, and morals;

NOW, THEREFORE, for the purpose of complying with State law and for the further purpose of promoting and securing the public health, safety, morals, and welfare,

THE CITY COUNCIL OF THE CITY OF LYNNWOOD DOES ORDAIN AS FOLLOWS:

SECTION 1. New Chapter Added to LMC. A new Chapter, 5.53, is added to Title 5 of the Lynnwood Municipal Code ("LMC") licensing and regulating the practice of massage.

SECTION 2. Definitions. A new section is added to Chapter 5.53 LMC to read as follows:

5.53.010 DEFINITIONS

A. For the purpose of this Chapter, the following terms, words, and phrases shall have the following meanings:

1. "Massage", "massage treatment" or "massage therapy" means the external manipulation or pressure of soft tissue of the body of another including, but not limited to, rubbing, kneading, hitting or any other manipulation whether manually or by the use of equipment, machinery, or appliances, with or without the aids of superficial heat, cold, water, lubricants, or salts. Massage does not include diagnosis or attempts to adjust or manipulate any articulations of the body or spine or mobilization of these articulations by the use of a thrusting force.
2. "Massage Practitioner" means any person giving massages or massage treatments.

3. "Person" means any individual, firm, partnership, association, corporation, company or organization of any kind.
4. "Authorized health care practitioner" has the same meaning as set forth in RCW 18.74.010(7), i.e. a physician, osteopathic physician, chiropractor, naturopath, podiatrist, or dentist licensed by the State of Washington provided that massage treatments are within the scope of his state license.

B. All references herein in the masculine gender shall include the feminine gender, and the feminine the masculine. All references to the singular shall include the plural, and the plural the singular.

SECTION 3. License Required. A new section is added to Chapter 5.53 LMC to read as follows:

5.53.020 MASSAGE PRACTITIONER'S LICENSE REQUIRED

It shall be unlawful for any person to practice massage unless:

- A. He is licensed as a massage practitioner according to the provisions of this Chapter; and
- B. The massage is given on the licensee's business premises or on premises which are exempt from the provisions of this Chapter.

SECTION 4. Exemptions. A new Section is added to Chapter 5.53 LMC to read as follows:

5.53.030 EXEMPTIONS

The provisions of this Chapter shall not apply to:

- A. Authorized health care practitioners or their employees;
- B. Massages given in a private residence when no fee, compensation, or any other consideration is charged or paid, directly or indirectly, for such services.
- C. Massage treatments given in a private residence by a massage practitioner who is administering such treatments pursuant to a written prescription from an authorized health care practitioner;

- D. Athletic coaches or trainers giving massages while affiliated with public or private educational institutions or athletic organizations;
- E. Students enrolled in schools of massage performing therein such practices of massage as are incidental to their course of study;
- F. Massage treatments given in any licensed hospital, licensed nursing or convalescent home;
- G. Licensed beauty operators and barbers who perform only such acts of massage as are customarily given in beauty salons and barber shops for purposes of beautification only.

SECTION 5. Fees. A new Section is added to Chapter 5.53 LMC to read as follows:

5.53.040 FEES

A. The fee for an initial City of Lynnwood massage practitioner's license shall be thirty-five dollars (\$35.00). The annual renewal fee for such a license shall be twenty-five dollars (\$25.00). The premises upon which any massage practitioner is practicing massage shall also be licensed as a resident business pursuant to the provisions of LMC 5.06, the fees for which are established by LMC 5.06.040(C) and (D).

SECTION 7. License Applications. A new Section is added to Chapter 5.53 LMC to read as follows:

5.53.050 APPLICATION FOR AND RENEWAL OF MASSAGE PRACTITIONER'S LICENSE

No license or renewal of license to do business as a massage practitioner shall be issued or renewed except upon written application to the Lynnwood City Clerk, which shall be signed and sworn to by the applicant. Such application shall contain the following information:

- A. The true name, home address, telephone number, and the age of the applicant;
- B. The business name, business address and telephone number of the premises wherein the applicant intends to give massages;
- C. Residence address(es) of the applicant for the last five years.

- D. Two (2) "two-inch by two-inch" black and white photographs of the applicant taken within six (6) months of the date of the application, showing only the full face of such applicant. Said photographs shall be provided at the applicant's expense. The license, when issued, shall have affixed to it one of such photographs and the license shall at all times be posted and displayed in a conspicuous place in the establishment where the massage practitioner is practicing massage. Such license shall not be tampered with in any manner.

- E. All assumed names or aliases which have been or are used by the applicant.

SECTION 8. Proof of State License Required. A new Section is added to Chapter 5.53 LMC to read as follows:

5.53.060 PROOF OF STATE LICENSING REQUIRED

No massage practitioner's license or renewal of same shall be issued unless the applicant provides evidence to the satisfaction of the Lynnwood City Clerk that he holds a current, valid Massage Practitioner's license issued by the State of Washington pursuant to Chapter 18.108 RCW, as now existing or hereafter amended, or otherwise possesses a current, valid professional license issued by the State of Washington pursuant to Title 18 RCW, as now existing or hereafter amended, which authorizes him to give massage treatments. A licensee shall notify the Lynnwood City Clerk within three (3) business days of receiving any notification from the State of Washington that his license which authorizes him to give massages has been suspended or revoked. Upon receipt of notice from any source that a licensee's State license has been suspended or revoked, the City Clerk shall suspend or revoke the licensee's city license until such time as the licensee presents satisfactory proof that his state license has been reinstated.

SECTION 9. Public Officials' Duties. A new Section is added to 5.53 LMC to read as follows:

5.53.070 DUTIES OF PUBLIC OFFICIALS

Upon the filing of an application for or renewal of a massage practitioner's license, the City Clerk shall forward copies to the Police Department, the Planning Director, the Building Official, and the Fire Chief; and

- A. Within sixty (60) days after receipt of a copy of the application, the Police Department shall investigate the

statements set forth in the application and report to the Clerk whether or not the information received by the Police Department confirms the information in the application.

- B. Within sixty (60) days after receipt of a copy of the application, the Planning Director shall inspect the proposed establishment wherein the applicant intends to do business and report to the City Clerk whether the location of the proposed establishment is in conformity with the regulations of the Zoning Code.
- C. Within sixty (60) days after receipt of a copy of the application, the Fire Chief and Building Official shall examine the proposed establishment wherein the applicant intends to practice massage and report to the City Clerk whether it complies with the requirements of the City's Building and Fire Codes.

SECTION 10. License Issuance. A new Section is added to Chapter 5.53 of the Lynnwood Municipal Code to read as follows:

5.53.080 ISSUANCE OF LICENSE OR RENEWAL OF LICENSE.

If the Lynnwood City Clerk finds that the information given in the application for, or renewal of, a massage practitioner's license is accurate; that the applicant possesses a current, valid Washington State Massage Practitioner's license or other Washington State professional license authorizing him to give massages; and the applicant has complied with all applicable provisions of the Lynnwood Municipal Code, the Lynnwood City Clerk shall approve the application and issue the license; otherwise, the Clerk shall deny the application and so notify the applicant pursuant to LMC 5.04.030(E).

SECTION 11. Term of License. A new Section is added to Chapter 5.53 LMC to read as follows:

5.53.085 TERM OF LICENSE

Licenses issued pursuant to this Chapter shall be valid through December 31 of the year of issuance and shall expire on that date. The license may be renewed by following the same procedures specified for filing the original application. Renewal applications may be filed after October 15th of any year. Licenses issued pursuant to this Chapter shall not be assigned or transferred from holder or place to another. If such license is so assigned or transferred, the license shall expire automatically on the date of transfer.

SECTION 12. License Suspension/Revocation Procedures. A new Section is added to Chapter 5.53 LMC to read as follows:

5.53.090 SUSPENSION AND/OR REVOCATION OF LICENSE

A. SUSPENSION AND REVOCATION SCHEDULE

1. The City Clerk shall suspend any massage practitioner's license for a period of fifteen (15) days upon the licensee's first violation of this Chapter.
2. The City Clerk shall suspend any massage practitioner's license for a period of forty-five (45) days upon the licensee's second violation of this Chapter.
3. The City Clerk shall revoke any massage practitioner's license upon the licensee's third violation of this Chapter within three (3) years. The period of any such revocation shall be one (1) year.
4. Notwithstanding the provisions of LMC 5.53.080, the City Clerk shall deny the renewal of any massage practitioner's license or revoke any such license for a period of one (1) year if a licensee has:
 - a. Made any false or misleading statements on the application for license or misrepresentations to the City in order to induce or prevent action by the City;
 - b. In connection with the licensee's practice of massage:
 1. Engaged in an act of prostitution, or has promoted, or permitted prostitution on the licensee's premises;
 2. Used, or distributed controlled substances;
 - c. Failed or refused to qualify for or obtain any license required by the City of Lynnwood or the State of Washington in connection with the licensee's practice of a massage.

B. NOTICE PROCEDURES FOR SUSPENSION OR REVOCATION

1. Whenever the City Clerk has determined that a massage practitioner's license shall be suspended or revoked, the City Clerk shall issue a "Notice of Suspension" or "Notice of Revocation" to the licensee, which shall include the following:
 - a. Name of person(s) involved;

- b. Date(s) and description(s) of violation(s) of this Chapter;
 - c. Description of action taken by the City Clerk;
 - d. Rights of Appeal as set forth in LMC 5.53.100.
2. Service of Notice of suspension or revocation shall be either by personal service or by mailing same by certified mail, postage prepaid, return receipt requested, to the licensee at his/her last known address. Proof of personal service shall be made by the person affecting the source at the time of service by a written declaration under penalty of perjury declaring time, date, and the manner of service. If any Notice served by certified mail is refused by the licensee, service shall be deemed complete on the third day following the date of mailing.

SECTION 13. Hearing Procedures. A new section is added to Chapter 5.53 LMC to read as follows:

5.53.100 SUSPENSION OR REVOCATION OF LICENSE: HEARING.

Any licensee whose license has been revoked or suspended or whose application for license or renewal thereof has been denied may, within ten (10) days following service of a Notice of Suspension or Revocation, or within ten (10) days of the date of denial of an application for a license or renewal thereof, file a written request for a hearing before the Lynnwood Mayor or his designee, who shall hold a hearing within forty-five days of receiving said request. Upon timely filing of said request, the revocation or suspension shall be stayed. At the hearing, the licensee or applicant shall show cause why the license should not be suspended, revoked or denied. If the Mayor or his designee shall find that the license should be suspended, revoked or denied considering the report of the Clerk and such material as is submitted to him, then said license shall be suspended, revoked, or denied. An appeal from such decision may be made to the Superior Court within fourteen (14) days of the date of decision, by writ of review or certiorari.

SECTION 14. Violations and Penalty. A new Section is added to Chapter 5.53 LMC to read as follows:

5.53.110 VIOLATION AND PENALTY

Any violation of the provisions of this Chapter is unlawful. Any person convicted of a violation of this Chapter is guilty of a misdemeanor, and shall be punished

by a fine of not more than \$500.00 or by imprisonment for not more than ninety (90) days in the City jail.

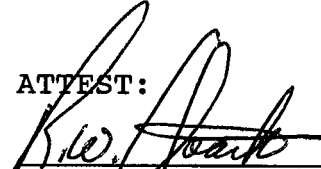
SECTION 15. Severability. If any section, subsection, paragraph, sentence, clause, phrase or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, paragraph, sentence, clause, phrase or work of this ordinance.

SECTION 16. Effective Date. This ordinance shall take effect and be in force five (5) days after its passage, approval and publication.

PASSED THIS 22nd day of July, 1991, and signed in authentication of its passage this 23rd day of July, 1991.


M. J. HRDLICKA, Mayor

ATTEST:


R. W. Noack, City Clerk

APPROVED AS TO FORM


City Attorney's Office