

CITY OF LYNNWOOD

ORDINANCE NO. 2580

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, CREATING CHAPTER 5.55 OF THE LYNNWOOD MUNICIPAL CODE; ESTABLISHING THE LICENSING AND REGULATION OF CERTAIN DAY SPAS IN THE CITY OF LYNNWOOD; PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE AND FOR SUMMARY PUBLICATION.

WHEREAS, the City of Lynnwood does not regulate "Body Scrubs" or the Day Spas within which the "Body Scrub may occur; and;

WHEREAS, the regulation of such services is necessary and appropriate to protect the public interests,

WHEREAS, such regulation is imposed for the purpose of promoting public health, safety, morals, and welfare,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LYNNWOOD, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Chapter 5.55 of the Lynnwood Municipal Code is hereby created as follows:

5.55.010 DEFINITIONS

- A. For the purpose of this Chapter, the following terms, words and phrases shall have the following meanings:
1. "Day Spa" means any place not exempted from the provisions of this Chapter where body scrubs or facilities for body scrubs of any kind whatsoever, are given or furnished.
 2. "Body Scrub(s)" shall include, but is not limited to, a personal service involving washing, scrubbing, exfoliating or in any other manner coming into substantial personal contact with a client / customer.
 3. "Public Body Scrub Facility" shall include all facilities where body scrubs are provided.
 4. "Person" means any individual, firm, partnership, association, corporation, company, or organization of any kind.

5. "Authorized Health Care Practitioner" has the same meaning as set forth in RCW 18.74.010(7) as now existing or hereafter amended, provided that the administration of bath treatments is within the scope of such person's State license.
 6. "Body Scrub attendant" means any person who administers or performs services to patrons of a public body scrub or who supervises the work of such persons. The term does not include a person who performs only custodial or janitorial work.
 7. "Genitals" means genitals, pubic area, anus or perineum of any person, or the vulva or breasts of female.
 8. "Manager" means any person who manages, directs, administers, or is in charge of, the affairs and/or conduct of any portion of any activity involving public body scrubs occurring at any place offering such services.
- B. All references herein to the masculine gender shall include the feminine, and the feminine the masculine; all references to the singular shall include the plural, and the plural the singular.

5.55.020 EXEMPTIONS

The provisions of this Chapter shall not apply to:

- A. Body scrubs given in any licensed:
 1. Hospital, nursing or convalescent home;
 2. Business establishment of an authorized health care practitioner;
- B. Ordinary tub or shower baths where an attendant is not required;
- C. Body scrubs given or furnished on the premises of a single or multiple family residence when:
 1. No fee or other consideration is charged;
 2. Such body scrubs are given by a licensed nurse, physical therapist, or occupational therapist who is giving a bath treatment pursuant to a written prescription from an authorized health care practitioner.
- D. Facilities for body scrubs furnished as an incidental part of:
 1. The operation of a hotel, as the same is defined in LMC 5.70.010, or lodging house;

2. A municipal recreation center;
3. A private social or athletic club not open to the public generally.

5.55.030 PUBLIC BODY SCRUB FACILITY LICENSE AND INSURANCE REQUIRED.

It shall be unlawful to conduct, operate, or maintain a public body scrubs facility unless such establishment is licensed as herein provided and is covered by a liability insurance policy in a minimum amount of Three Hundred Thousand Dollars (\$300,000.00). The licensee shall notify the Finance Director in writing, of any cancellation of said insurance policy within three (3) days of receiving notice that the required policy has been canceled. Failure to so notify the Finance Director shall be grounds for license suspension or revocation.

5.55.031 LICENSE FOR BODY SCRUB MANAGERS

It is unlawful for any person to manage a public body scrub facility without first applying and receiving from the city a body scrub facility manager license.

5.55.032 LICENSE FOR BODY SCRUB ATTENDANTS

It is unlawful for any person to be a body scrub attendant without first applying and receiving from the city a body scrub attendant license.

5.55.035 BUSINESS REGISTRATION

Unless otherwise specified, the general business registration provisions contained in Chapter 5.04 of the Lynnwood Municipal Code shall apply to this chapter, in addition to the provisions hereof.

5.55.040 FEES

The fee for a public body scrub facility license shall be Forty Dollars (\$40.00) per year. Upon initial application for a public body scrub facility license, the applicant and employees overseeing and attending to the body scrubs shall also pay a Thirty-five dollar (\$35.00) non-refundable investigation fee. The initial investigation will include fingerprinting. Annual license renewal fee for the applicant and employees overseeing and attending to the body scrubs will be Thirty-five dollars (\$35.00) which provides for an investigation in accordance with the procedures of the City and Lynnwood Police Department.

5.55.050 PUBLIC BODY SCRUB FACILITY LICENSE APPLICATION AND RENEWAL

- A. *Public body scrub business.* All applications for a public body scrub business license or license renewal shall be submitted in the name of the person or entity

proposing to conduct body scrubs as defined herein on the business premises, shall be signed by such person or his or her legally authorized agent, and notarized or certified as true under penalty or perjury. All applications shall be submitted on a form supplied by the Finance Director or designee. Such application shall contain the following information:

1. The true name, residence address, residence telephone number, date and place of birth, driver's license number and tax identification number if the applicant is a corporation or other entity;
 2. The business name, business address, and telephone number of the establishment.
 3. The names, addresses, telephone numbers of any partners, corporate officers, or shareholders who own ten percent or more of the business, or other persons who have a substantial interest or management responsibilities in connection with the business, specifying the interest or management responsibility of each. For the purpose of the subsection "substantial interest" shall mean ownership of ten percent or more of the business, or any other kind of contribution to the business of the same or greater size.
 4. Two "two-inch by two-inch" black and white photographs of the applicant, or if a partnership or corporation, of the party signing the application, taken within six (6) months of the date of the application, showing only the full face of such applicant. Such photographs shall be provided at the applicant's expense. The license, when issued, shall have affixed to it one of such photographs. Such license shall be posted and displayed at all times in a conspicuous place in the establishment where the license is enjoyed and it shall not be tampered with in any manner.
 5. The applicant, or if the applicant is a partnership or corporation, the party signing the application, shall also submit to finger printing by the Lynnwood Police Department and such fingerprints shall be retained in the application file, a copy of which shall be forwarded to the Federal Bureau of Investigation Identification Bureau.
 6. All assumed names or aliases which have been or are being used by any person whose name appears on the application.
 7. Proof of liability insurance coverage in the minimum amount required by this Chapter. Failure to provide such proof shall constitute an incomplete application and shall not be processed.
- B. *Body scrub manager and attendant.* All applications for a manager or attendant's license or license renewal, shall be signed by the applicant and notarized or certified to be true under penalty of perjury. All applications shall be submitted

on a form supplied by the Finance Director of designee. Such application shall contain, at a minimum, the following information:

1. The applicant's name, residence address, residence telephone number, date and place of birth and driver's license number.
2. A letter dated no more than 30 days prior to the submission of the application, from the owner of the business indicating intent to employ the applicant on a specified date;
3. Written proof that the applicant is 18 years of age or older. Written proof shall mean the following:
 - (a) A current motor vehicle operator's license by any state bearing the applicant's photograph and date of birth; or
 - (b) A valid identification card issued by the State of Washington which bears the applicant's photograph and date of birth; or
 - (c) A current passport.
4. The mailing address and street address of all places within the City of Lynnwood at which the body scrub manager or attendant will provide services. The body scrub manager or attendant shall notify the City Finance Director or designee, in writing, of any changes in, or additions to the locations of such services within 14 days of any such change of addition.

C. *Background checks.* All applications submitted pursuant to this chapter will be subject to a background check in accordance with the procedures of the City and Lynnwood Police Department.

5.55.070 ATTENDING A PATRON UNDERGOING A BODY SCRUB AS TREATMENT - PROHIBITIONS

It is unlawful for any person other than an authorized health care practitioner or a person licensed by the City of Lynnwood as a body scrub manager or attendant to administer to or perform services for a patron of a public body scrub. It is unlawful for the owner, agent, manager, or person in charge of a public body scrub facility to permit any other persons to attend a patron while a patron is obtaining the services of a body scrub.

5.55.080 CLERK TO ISSUE LICENSE

If, from the information supplied to the Finance Director, it appears that the application and the premises are fit and proper, that the statements contained in the application are true, and that the applicant has complied with all the requirements of Lynnwood

Municipal Code, the Finance Director shall issue a public body scrub license to the applicant, otherwise the application shall be denied pursuant to the provisions of LMC 5.04.030(E).

5.55.085 STANDARDS FOR DENIAL OF APPLICATION FOR LICENSE

- A. *Public body scrub license.* The Finance Director or designee may deny any public body scrub license request if he determines that the proposed business does not fully comply with applicable federal, state and/or local laws, ordinances or regulations, including but not limited to building, fire, police, public works, zoning and land use codes and health codes. The Finance Director or designee may further deny any public body scrub license request if he determines that the applicant has:
1. Made any material misstatement in the application for a license; or
 2. Proposed a place of business or operates a business which fails to comply with all applicable requirements of the Code including without limitation the zoning, building, health and fire codes and all other applicable local, state, or federal laws, rules and regulations; or
 3. Had any convictions which have a direct connection with the licensed activity including, but not limited to theft, prostitution, promoting or permitting prostitution, sexual offenses, consumer fraud, massage practitioner, massage manager and/or public bathhouse manager/attendant violation or obscenity, within five years prior to the date of application; or
 4. Had a body scrub or similar license denied, revoked or suspended by the city, or any other jurisdiction within five years prior to the date of such application.
- B. *Body scrub manager/attendant license.* The Finance Director or designee may deny any body scrub attendant license applied for under the provisions of this chapter if the Finance Director or designee determines that the applicant has:
1. Made any material misstatement in the application for a license; or
 2. Not complied with the operating requirements set out in sections 5.55.115 or any other requirements of this chapter; or
 3. Had any convictions which have a direct connection with the licensed activity including, but not limited to, theft, prostitution, sexual offenses, consumer fraud, massage practitioner, massage manager and /or body scrub manager/attendant violation, or obscenity, within five years prior to the date of application; or

4. Had a body scrub manager or attendant or similar license denied, revoked or suspended by the city or any other jurisdiction within five years prior to the date of such application.

5.55.090 LIQUOR, CONTROLLED SUBSTANCES – PROHIBITED – EXCEPTIONS

- A. Liquor, as that term is defined by the Washington State Alcoholic Beverage Control Act, shall not be distributed or consumed on any premises under regulation by this chapter, unless the premises are licensed to serve the same by the Washington State Liquor Control Board.
- B. Controlled substances, as defined by the Washington State Uniform Controlled Substances Act, shall not be distributed or consumed on any premises under regulation by this chapter.

5.55.100 HOURS

All public body scrub facilities shall be closed, and all services performed therein discontinued, between the hours of twelve midnight and eight a.m.

5.55.115 STANDARDS OF CONDUCT/OPERATION

- A. *Owner/manager requirements.* The following standards of conduct and operation shall be adhered to by the owner, proprietor, manager, attendant, or person in charge of any public body scrub facility:
 1. Any person who is employed to be a body scrub attendant must be at least 18 years of age.
 2. Public body scrub facility must have a manager on the premises at all times during the hours of business, and/or during the presence of patrons.
 3. Any person who is employed by a public body scrub facility must present documentation that he or she has attained the age of 18 years when an inspection pursuant to this chapter is conducted. Proper documentation shall be described in section 5.55.050.
 4. Provide that all doors in such premises, excluding doors in the office and storage rooms, unless such doors provide access to service areas, are so equipped that they may not be fastened shut to as to prevent reasonable access by such authorities who announce their authority to enter prior to inspection.
- B. *All licenses.* The following standards of conduct and operation shall be adhered to by all licensees:

1. All licensees shall comply with all applicable federal, state and local laws, including all safety and sanitation requirements and the City's building, fire, and zoning codes;
 2. All licensees shall allow any police officer, fire official, building official, the Finance Director or designee, or the representative for the Snohomish County Health Department entry to the premise during the hours the public bathhouse is open for business, upon presentation or proper identification, for purposes of inspecting the premises;
 3. Maintain business receipts showing the date of services(s) given, the type of service(s) rendered and the name and city license number of the employee rendering the service(s). These business receipts shall be retained for a period of three (3) years after the date of service(s), and shall be open to inspection on the licensee's premises by officers of the city of Lynnwood during business hours, for the purpose of ascertaining compliance with the provisions of this section.
 4. Post in a prominent place a list of all services offered with a brief description of what the service entails along with the costs of such service(s). All business transactions with the customers must be conducted in accordance with said posted list; and
 5. Not distribute or consume any alcoholic beverages and/or controlled substances on licensed premises.
- C. *Minors.* It shall be unlawful for the owner, manager, body scrub attendant or any employee or agent to admit anyone under the age of 18 years and permit them to remain in or about such premises, unless such person under the age of 18 years is accompanied by his or her parent or legal guardian.
- D. *Employees.* It shall be unlawful for the owner, agent, manager or person in charge of this facility regulated by this chapter to have employees under the age of 18 years.
- E. *Prohibited Activities.* It shall be unlawful for any owner, proprietor, manager, employee or agent of any facility to intentionally touch or manipulate the genitals of a customer in any manner, and such activity shall be grounds for revocation of the business license, as well as the employee license, whether the owner knew of, or encouraged the act, or whether the customer requested or acquiesced in the act.
- F. *Dress Regulations.* It shall be unlawful for any public body scrub facility owner, manager, attendant or any employee or agent to disrobe, or to be partially disrobed in the presence of another.

- G. *Supervision/Inspection.* The owner or manager shall have the premises supervised at all times when open for business. Rooms and stalls used for the purpose of body scrubs or where an attendant is provided or present shall be constructed in such a manner as to permit inspection.

5.55.160 UNLAWFUL TO PERMIT VIOLATIONS

It is unlawful for the owner, proprietor, agent, manager or person in charge to knowingly permit or allow any person to violate any sentence, section or clause of this chapter while said person is upon the premises licensed hereunder.

5.55.180 UNLAWFUL TO ADVERTISE WITHOUT LICENSE.

It is unlawful to advertise any establishment regulated by this Chapter which is not licensed according to the provision of this Chapter.

5.55.190 SUSPENSION AND/OR REVOCATION OF LICENSE

A. SUSPENSION AND REVOCATION SCHEDULE

1. The Finance Director shall suspend any body scrub facility license for a period of fifteen (15) days upon the licensee's first violation of this Chapter.
2. The Finance Director shall suspend any body scrub facility license for a period of forty-five (45) days upon the licensee's second violation of this Chapter.
3. The Finance Director shall revoke any body scrub facility 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. The Finance Director shall suspend a body scrub facility license upon receipt of notice that the licensee's required insurance has been canceled until satisfactory proof of insurance is presented to the Finance Director.
5. Notwithstanding the provisions of LMC 5.55.080, the Finance Director shall deny the renewal of any body scrub facility license or revoke any such license 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 operation of a body scrub facility:
 1. Engaged in an act of prostitution, or has promoted, or permitted prostitution of the licensee's premises;

2. Used, or distributed controlled substances on the premises of a body scrub facility;
- 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 operation of a body scrub facility.

B. NOTICE PROCEDURES FOR SUSPENSION OR REVOCATION

1. Whenever the - Finance Director has determined that a body scrub facility license shall be suspended or revoked, the - Finance Director 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 violations(s) of this Chapter;
 - c. Description of action taken by the Finance Director;
 - d. Rights of Appeal as set forth in LMC 5.55.200.
2. Service of Notice of suspension or revocation shall be either by personal service or by mailing 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 service 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.

5.55.200 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.

5.55.210 TERM OF LICENSE.

Licenses issued pursuant to this Chapter shall be valid through December 31st 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 December 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.

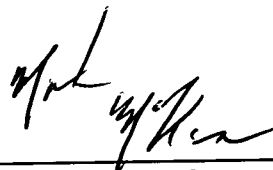
5.55.220 VIOLATION AND PENALTY

Any violation of the provisions of the 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 five hundred dollars (\$500.00) or by imprisonment for not more than ninety (90) days in the City jail.

Section 2. Severability. If any section, subsection, sentence, clause, paragraph, 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, sentence, paragraph, clause, phrase or word of this ordinance.

Section 3. Effective Date. This ordinance shall take effect and be in force five (5) days after its passage, approval and summary publication by title only.

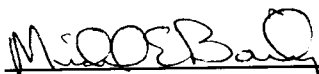
PASSED THIS 25th day of July, 2005 and signed in authentication of its passage this 26th day of July, 2005



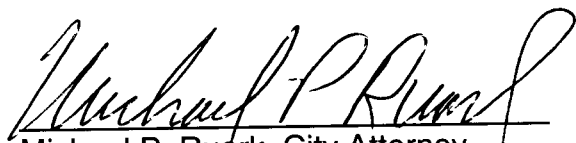
Mike McKinnon, Mayor

ATTEST:

APPROVED AS TO FORM



Michael E. Bailey, Finance Director



Michael P. Ruark, City Attorney