

ORDINANCE NO. 1363

AN ORDINANCE OF THE CITY OF DEL CITY, OKLAHOMA AMENDING CHAPTER 10 (LICENSES AND BUSINESS REGULATIONS) OF THE DEL CITY CODE OF ORDINANCES; ADOPTING GENERAL REGULATIONS FOR MASSAGE THERAPY ESTABLISHMENTS WITHIN THE CITY, INCLUDING PROVISIONS RELATED TO INSPECTIONS, VIOLATIONS, PENALTIES AND APPEALS; CREATING REGULATIONS FOR LICENSING OF MASSAGE THERAPY ESTABLISHMENTS AND MASSAGE THERAPISTS; ESTABLISHING MINIMUM RESTRICTIONS FOR OPERATION OF MASSAGE THERAPY ESTABLISHMENTS; DECLARING REPLEALER, PROVIDING FOR SEVERABILITY; DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF DEL CITY, OKLAHOMA:

Section 1: REVISION OF CHAPTER 10 (BUSINESSES AND BUSINESS REGULATIONS). Chapter 10 (Businesses and Business Regulations) is amended to add the following and renumber as necessary:

Article XIII. Massage Therapy Establishments.

Division 1. In General.

Section 10-500. Purpose.

The regulations contained within this division are intended to ensure the health, safety and welfare of residents of the community by ensuring that massage therapy establishments are operated in a manner free of unsanitary, unprofessional or indecent activities.

Section 10-501. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) Employee means any person at least 18 years of age who renders any service in connection with the operation of a massage business and receives compensation from the manager of the business or patrons. Employee specifically includes a massage therapist operating as an independent contractor.
- (2) Licensee means the person to whom a license has been issued to own or operate a massage therapy establishment or to engage in massage therapy.
- (3) Manager means the person controlling, conducting, operating or managing a massage therapy establishment, but shall not include the massage therapist, as defined in this section.

(4) Massage means any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external parts of the human body with the hands or with the aid of any mechanical electrical apparatus or appliances with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, mud, paraffins, salts or other such similar preparations commonly used in the practice of massage, under such circumstances that it is reasonably expected that the person to whom the treatment is provided or some third person on his or her behalf will pay money or give any other consideration or any gratuity therefor. Massage shall include seated massage.

(5) Massage therapy establishment means any establishment having a source of income or compensation derived from the practice of massage as defined in Paragraph (4) and which has a fixed place of business where any person engages in or carries on any of the activities as defined in Paragraph (4).

(6) Massage therapist means any person who, for any consideration whatsoever, engages in the practice of massage as defined in Paragraph (4).

(7) Off-site massage service means any business, the functioning of which is to engage in or carry on massages as defined in Paragraph (4) above at a location designated by the customer or client or at a location other than at a massage establishment. Off-site massage service may include seated massage.

(8) Patron means any person at least 18 years of age or if under 18 years of age with written parental or legal guardian consent who receives a massage under such circumstances that it is reasonably expected that he or she will pay money or give any other consideration therefor.

(9) Owner means any individual, partnership, firm, association, joint stock company, corporation or combination of individuals of whatever form and character having any sort of beneficial interest in the massage therapy establishment.

(10) Seated massage means any massage of the neck, arms, shoulders and back area above the waist where the client is fully clothed, sitting in a special chair designed for upper body massage and done without the use of supplementary aids, such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, mud, paraffins, salts, or other similar preparations commonly used in the practice of massage. Seated massage may be performed either at a massage establishment or off-site.

(11) Sexual misconduct means any criminal conviction, either misdemeanor or felony, within the City, this State or any other state for the crime of rape, child molestation, prostitution, acts of lewdness or any crime where the convicted person is required to register as a sex offender under the statutes of this State.

(12) Sexual or genital areas means genitals, pubic area, buttocks, anus, or perineum of any person, or the vulva or breasts of a female.

#### Section 10-502. Exemptions.

The provisions of this chapter shall not apply to professionals in the following occupations while engaged in performance of their professional duties:

- (1) Doctors of medicine or osteopathy duly licensed by the appropriate state board;
- (2) Chiropractic or podiatric doctors duly licensed by the appropriate state board;
- (3) Dentists duly licensed by the appropriate state board;
- (4) Physical therapists duly licensed by the appropriate state board;
- (5) Barbers and beauticians duly licensed by the appropriate state board, provided that massage must be limited to the head and neck;
- (6) Students at a vocational school properly licensed or accredited by the appropriate state board, while participating in an internship program under the direct supervision of a qualified instructor who holds a valid massage therapist license under these regulations.
- (7) Establishments and practitioners specializing in manicures and pedicures may engage in activities normally considered to be part of a manicure or pedicure without such an activity constituting massage therapy, provided that massage-related activities are not separately advertised, priced or provided and provided that contact is strictly limited to the hands or feet of patrons during the course of the manicure or pedicure.

#### Section 10-503. Inspections.

The premises of massage therapy establishments are subject to inspection by the Building Official or designee or by the Chief of Police or designee during the establishment's hours of operation or at any time the establishment is occupied outside of those hours of operation. The scope of such an inspection may include any activity needed to document full compliance with these regulations.

Any person obstructing or delaying, or attempting to obstruct or delay, a city official conducting or attempting to conduct an inspection shall be deemed guilty of an offense.

#### Section 10-504. Violations not specifically enumerated.

In addition to any offenses specifically enumerated in these regulations, subject to the provisions contained herein related to responsibility for violations, any person who, through an act, attempted act or failure to act causes or permits the existence of a condition contrary to the regulations contained in this chapter shall be guilty of an offense.

For violations consisting of conditions persisting for more than one day, each day the violation persists shall be considered a separate offense.

#### Section 10-505. Responsibility.

The owner(s) of the property in which the massage therapy establishment is located, any property managers representing the owner(s) of the property, the owner(s) of the massage therapy establishment, the manager of the massage therapy establishment and any massage therapists are each responsible for compliance with all provisions of these

regulations. In the event of a violation, each shall be deemed guilty of an offense unless otherwise specified.

Property owners and property managers who are not owners or operators of the massage therapy establishment shall not be responsible for violations relating to operation of a massage therapy establishment unless they are notified of the existence the violation and fail to take action to correct the violation within ten (10) days.

Property owners and property managers may be exempted from responsibility from violations occurring on their property if they can provide evidence that they have a contractual agreement with the massage therapy establishment specifically requiring compliance with these regulations and permitting inspections and/or compliance assessments by the property owner and property manager, that they have conducted inspections and/or compliance assessments at least monthly, and that they have reported any possible violations to the Building Official immediately on discovery. In the absence of documentation showing full compliance with this provision, property owners and property managers shall be responsible for any and all violations associated with massage therapy establishments operating on their property.

#### Section 10-506. Penalties.

Any person violating a provision of this article, upon conviction thereof, shall be subject to a fine or deferral fee in lieu of fine of not more than seven hundred fifty dollars (\$750.00) and costs and/or imprisonment for not more than sixty (60) days and costs.

#### Section 10-507. Nuisance created and abatement of nuisance.

Operation of a massage therapy establishment in a manner contrary to the requirements set forth in this article shall be considered a public nuisance. Notwithstanding any other provision contained herein, the city make take action to abate such a nuisance by any means necessary, including, but not limited to, closing an unlawful establishment and/or ordering termination of utility services.

Any costs associated with such an abatement shall be assessed against the property as charges coequal with ad valorem taxes and shall also be the personal responsibility of the property owner.

#### Section 10-508. Application to existing businesses.

Any business currently operating as a massage therapy establishment in compliance with all applicable regulations shall come into compliance with the regulations contained within this article according to the following schedule:

- (A) The establishment shall comply with regulations related to hours of operation and signage no later than fourteen (14) days following the effective date of these regulations.
- (B) The establishment shall comply with all regulations contained within this article no later than ninety (90) days following the effective date of these regulations.

Section 10-509. Appeals and Variances.

Any person aggrieved by or seeking a variance from a provision contained within this article shall have the ability to make application for an appeal or variance to the Board of Adjustment by submitting a completed application, all required supporting documentation, and an application fee to the Building Official.

The applicant must demonstrate that an unjust hardship would be created by enforcement of the provisions of this article and must further demonstrate that the relief sought would not adversely impact the community or undermine the purpose of these regulations. When granting an appeal or variance, the Board shall grant such relief that is the minimum necessary to alleviate the hardship.

The fee for an appeal or variance shall be five hundred dollars (\$500) and shall be non-refundable once an application is submitted.

Division 2. Massage Therapy Licenses.

Section 10-510. Establishment license required.

No person shall own, control, lease, act as agent for, conduct, operate, or manage a massage therapy ordinance without first securing a license and paying the fee therefor. A separate license shall be required for each establishment. A valid license must be clearly displayed on the premises at all times.

Section 10-511. Requirements for establishment license.

Application for an establishment license must be made to the Building Official on forms provided and must be accompanied by any supplemental documentation required by the Building Official in order to evaluate the eligibility of the establishment for licensure. The applicant must disclose the identity of all parties having a financial interest in the business, must provide a criminal history report from the Oklahoma State Bureau of Investigation for all parties having an interest, and must provide consent of all parties having an interest to further background examination of a scope deemed necessary by the Building Official.

No license will be issued until compliance with all applicable regulations has been demonstrated.

Section 10-512. Therapist license required.

No person shall engage in massage therapy, whether in a massage therapy establishment or off-premises, without first securing a license and paying the fee therefor. A valid license must be clearly displayed at all times while a massage therapist is employed by a massage therapy establishment and must be available at the location of any off-premises massage therapy engagements.

Section 10-513. Requirements for therapist licenses.

Application for a therapist license must be made to the Building Official on forms provided and must be accompanied by any supplemental documentation required by the Building Official in order to evaluate the eligibility of the establishment for licensure.

The applicant must provide a criminal history report from the Oklahoma State Bureau of Investigation and must provide consent to further background examination of a scope deemed necessary by the Building Official.

An applicant for a therapist license must provide proof of education or certification in the area of massage therapy, in the form of:

- a) Successful completion of not less than 500 hours of massage studies from a state licensed or accredited massage school; or
- b) Certification by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) or similar bona fide national organization approved by the Building Official.

No license will be issued until compliance with all applicable regulations has been demonstrated.

Section 10-514. License approval.

Approval of an application for licensure shall be at the sole discretion of the Building Official.

Prior conviction for offenses related to improper sexual conduct or violations of any provision of this article shall render the applicant ineligible for licensure.

Past license actions, including suspension or revocation, may also serve as grounds for denial of a license application.

Section 10-515. License fees.

The fee for initial licensure of a massage therapy establishment shall be five hundred (500) dollars. The fee for renewal of a massage therapy establishment license shall be two hundred (200) dollars.

The fee for initial licensure of a massage therapist shall be two hundred (200) dollars. The fee for renewal of a massage therapist license shall be one hundred (100) dollars.

License fees shall not be prorated.

Section 10-516. License expiration and renewal.

Licenses shall expire on January 1 of each year. Licenses obtained during December shall be valid for the remainder of the year and the next, as if they had been obtained in January.

Renewal fees shall only be applicable for renewal of a valid, non-expired license. A thirty day grace period shall be afforded, after which the procedures and fees for initial licensure shall be followed.

Section 10-517. License suspension and revocation.

The Building Official may suspend or revoke a license issued under these regulations in the event of serious or repeated violation of the provisions of this article, for material misrepresentation of facts or for failure to disclose or report material changes.

Section 10-518. Requirement to report material changes.

Licenses are required to report any material changes to information provided in license applications within thirty (30) days of the change.

Section 10-519. Provisional licensure of therapists.

Therapists currently working at massage therapy establishments will be eligible for provisional licensure to permit time to meet educational or certification requirements. Provided that all other requirements for licensure are met no later than thirty (30) days from the effective date of these regulations, applicants will be eligible for a provisional license for one year.

### Division 3. Operational Regulations.

Section 10-520. Sanitation, required facilities and premises condition.

Massage therapy establishments will be maintained in a well-kept and sanitary state on both the interior and exterior. All code requirements must be met. There will be no provision for legally non-conforming installations that impact sanitation or life-safety, which must be fully compliant with all adopted codes at the time the establishment is first licensed.

Section 10-521. Posting of services and prices.

A complete listing of all services offered by the massage therapy establishment, along with prices therefor, must be posted in the reception area of the establishment. This listing shall be laminated or similarly protected and shall be printed in no less than seventy two (72) point font.

Section 10-522. Employee records and register.

Each massage therapy establishment shall maintain a register of all persons employed or otherwise permitted to engage in massage therapy at the establishment. This register must be available for inspection at all times and must be submitted with the establishment's license renewal application.

Section 10-523. Employment of massage therapists.

No massage therapy establishment shall employ or permit to work as massage therapist any person who lacks a valid massage therapist license.

Section 10-524. Infection and disease control.

No massage therapy establishment shall employ or permit any massage therapist to work and no massage therapist shall work in any establishment or location who is affected with any infectious, contagious or communicable disease. No person affected with any infectious, contagious or communicable disease shall be treated with a massage. Each massage therapy establishment shall keep adequate equipment and

supplies on hand to clean and disinfect equipment and other surfaces as needed to prevent the spread of disease and mitigate any hazard related to possible blood-borne pathogens.

Section 10-523. Required dress.

All employees of a massage establishment and all massage therapists shall be clean and professional. All employees and massage therapists shall wear appropriate professional attire, including clean, nontransparent outer garments that fully cover the sexual and genital areas.

Section 10-524. Required equipment.

All places where massage therapy is being conducted shall have clean, laundered sheets and towels in sufficient quantities which shall be laundered after each use and stored in a sanitary manner. Adequate laundry equipment, including commercial-grade washing and drying appliances and a proper laundry drain equipped with a separator/interceptor or grease trap as required by the Building Official shall be present and operational. Alternatively, the establishment may contract with a laundry service and shall maintain the records of such services and submit them with its application for initial licensure or license renewal.

Section 10-525. Hours of operation.

No massage therapy establishment may be open for business nor may any off-site service performed between the hours of 8:00 p.m. and 8:00 a.m. Monday through Thursday or between the hours of 6:00 p.m. and 8:00 a.m. Friday through Sunday.

Section 10-526. Advertising.

No massage therapy establishment or massage therapist shall place, publish or distribute or cause to be placed, published or distributed any advertisement, picture, or statement which is known or through the exercise of reasonable care should be known to be false, deceptive or misleading in order to induce any person to purchase or utilize any professional massage services. Any advertisement of a massage establishment or massage therapist shall contain the license number of said establishment or therapist. Any such advertisement must be retained by the massage therapy establishment or massage therapist, shall be available for inspection on the premises, and shall be submitted with any application for license renewal.

Section 10-527. Minors on premises.

No minor, other than a patron with written permission of a parent or legal guardian, shall be permitted to come to or remain within a massage therapy establishment.

Section 10-528. Alcoholic and non-intoxicating beverages.

No person shall sell, give, dispense, provide or keep, or cause to be sold, given, dispensed provided or kept, any alcoholic or non-intoxicating beverage within any massage therapy establishment.

Section 10-529. Massage rooms.

The following shall be applicable to all spaces within a massage therapy establishment:

- (A) All new massage therapy establishments must be in compliance with adopted codes, and, regardless of existing building regulations, must be in compliance with adopted requirements for new construction for the following topics:
  - (1) light, ventilation and area;
  - (2) accessibility;
  - (3) plumbing fixtures,
  - (4) access and egress.
- (B) No room, cubicle, booth or area in which massage can, will or is being conducted shall be fitted with a door capable of being latched or locked.

Section 10-530. Windows and window covering.

Windows in any area of a massage therapy establishment may not be covered with any opaque material. The total window area that may be covered by signage or other advertising shall not exceed thirty (30) percent of the area of that window. Any signage or advertising must comply with the provisions of this article and any applicable zoning or sign regulations.

Section 10-531. Indecent conduct.

- (A) It shall be unlawful for any person engaging in massage therapy to:
  - (1) place his or her hand or hands upon, to touch with any part of his/her body, to fondle in any manner, or to massage a sexual or genital area of any other person;
  - (2) to expose his/her sexual or genital areas, or any portion thereof, to any other person;
  - (3) to expose the sexual or genital areas, or any portion thereof, of any other person.
- (B) It shall be unlawful for any person, while in the presence of a person engaging in massage therapy, to fail to conceal with a fully opaque covering, his/her sexual or genital areas.
- (C) It shall be unlawful for any property owner, property manager, establishment owner, manager, employee or massage therapist to allow or permit indecent conduct within a massage therapy establishment.

Section 10-532. Reception area and payment for services.

Each massage therapy establishment must have a reception area that is constantly staffed during business hours. Payment for massage services, including any gratuity, must be remitted directly to the receptionist and a receipt that includes the date of service, type of service rendered, service fee and any gratuity must be given to the patron.

Division 4: Enforcement.

Section 10-540. Enforcement.

Enforcement of the provisions of this article shall be by any city official so directed by the City Manager, including, but not limited to the Building Official, Fire Marshal, and Chief of Police or their designees.

Section 10-541. Venue for Prosecution.

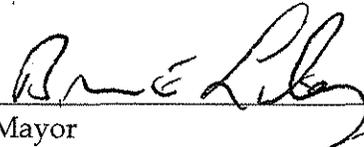
Prosecution of violations of the provisions of this article shall be in the City's Environmental Court unless transferred subject to the provisions contained within this code.

Section 2: REPEALER. All former Ordinances or parts of Ordinances conflicting or inconsistent with the provisions of this Ordinance are hereby repealed.

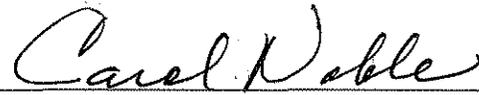
Section 3: SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, said portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 4: EMERGENCY. It being immediately necessary for the preservation of public health, peace and safety of the City of Del City and the inhabitants thereof, and emergency is hereby declared to exist by reason whereof, this Ordinance shall be in full force and effect from and after its passage and approval, as provided by law.

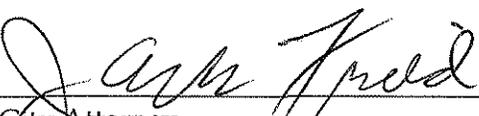
PASSED AND APPROVED and the emergency clause voted upon separately and passed and approved, this 17<sup>th</sup> day of DECEMBER 2012.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

Reviewed this 17 of December, 2012.

  
\_\_\_\_\_  
City Attorney