

AN ORDINANCE PROVIDING FOR REGULATIONS OF MASSAGE ESTABLISHMENTS; DEFINING CERTAIN TERMS; REQUIRING A LICENSE AND THE DISPLAY THEREOF; PROVIDING FOR INVESTIGATION OF APPLICANTS, MEDICAL CERTIFICATES, AND AN INVESTIGATION AND LICENSE FEE; REGULATES THE OPERATION OF MASSAGE ESTABLISHMENTS BY ESTABLISHING HOURS OF OPERATION, INSPECTION OF PREMISES AND HEALTH REQUIREMENTS; PROVIDING A PENALTY CLAUSE; PROVIDING A SEVERANCE CLAUSE AND EFFECTIVE DATE.

WHEREAS, the City of Addison does not have an ordinance regulating massage establishments and the City Council considers that it would be in the benefit of the public health, safety and welfare of the community to have such an ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ADDISON, TEXAS:

MASSAGE ESTABLISHMENTS

Section 1. Definitions.

For the purpose of this ordinance the following words shall have the meanings respectively ascribed to them by this section:

(a) CHIEF OF POLICE means the Chief of Police of the City of Addison, or his duly authorized representative.

(b) HEALTH OFFICER means the Health Officer appointed by the Addison City Council or the Addison City Administrator.

(c) MASSAGE means any process consisting of kneading, rubbing, pressing, stroking, tapping, pounding or otherwise manipulating the skin of the body of a human being, either with the hands or feet, or by means of electrical instruments

or apparatus, or other special apparatus; but shall not include massage by duly licensed physicians and chiropractors, and registered physical therapists who treat only patients recommended by a licensed physician and who operate only under such physician's direction, nor massage of the face practiced by beauty parlors or barber shops duly licensed under the penal code of the state.

(d) MASSAGE ESTABLISHMENT means any building, room, place or establishment, other than a regularly licensed hospital, where massage is practiced upon the human body by anyone not a duly licensed physician or chiropractor whether with or without the use of mechanical, therapeutic or bathing devices. This term shall not include, however, duly licensed beauty parlors, barber shops, or places where registered physical therapists treat only patients recommended by a licensed physician and operate only under such physician's direction.

(e) MASSAGE TECHNICIAN means a person who administers a massage to another person, for any form of consideration.

(f) OPERATOR means the person or organization which owns or maintains a massage establishment.

(g) RECOGNIZED SCHOOL means any school or institution of learning which has for its purpose the teaching of the theory, method, profession, or work of massage technicians, which school requires a resident course of study of not less than 1,000 hours to be given in not less than six calendar months before the student shall be furnished with a diploma or certificate of graduation from such school or institution of learning, showing the successful completion of such course of study or learning. Schools offering correspondence courses and not requiring actual class attendance shall not be deemed "recognized schools".

(h) A REGISTERED PHYSICAL THERAPIST means any registered and licensed therapist in the State of Texas or any other licensed physician in the State of Texas.

Section 2. Massage establishment license required; Application.

(a) It shall be unlawful for any person or organization to operate a massage establishment within the city without first having obtained a license therefor from the assessor and collector of taxes in accordance with the provisions of this ordinance, or to operate a massage establishment after such license has been revoked, or during a period for which such license has been suspended.

(b) Application for a massage establishment license shall be made to the Health Officer upon a form to be furnished by him, and shall include the following information:

(1) The exact nature of the services to be provided, the proposed place of business and facilities therefor, and the name and address of the applicant;

(2) If applicant is a corporation, the names and residence addresses of each of the officers and directors of the corporation and of each stockholder owning more than ten percent (10%) of the stock of the corporation. If applicant is a partnership, the names and residence addresses of each of the partners including limited partners.

(3) The two previous addresses, if any, immediately prior to the present address of the applicant.

- (4) Written proof that the individual or partnership applicant is over the age of eighteen (18) years.
- (5) Business, occupation, or employment of the applicant for the three years immediately preceding the date of the application.
- (6) The history of the applicant in operation of a massage establishment or other similar business or occupation, including, but not limited to, whether such person, in previously operating in this or another city or state under permit, has had such permit revoked or suspended and the reason therefor.
- (7) All criminal convictions other than misdemeanor traffic violations of the applicant, proprietor, partners, or corporate officers thereof.
- (8) The name and address of each massage technician to be employed in the establishment.
- (9) A diploma or certificate of graduation from a recognized school wherein the method, profession and work of massage is taught, or a certificate from a registered physical therapist certifying that the applicant had received at least 10 hours of instruction and teaching of the theory, method, profession, or work of massage technicians.
- (10) Such other identification and information necessary to discover the truth of all information required in the application.

Section 3. License investigation; Fee; Issuance; Renewal.

- (a) All applications for a massage establishment license shall be accompanied

by an investigation fee of \$250.00, no part of which shall be refundable. Upon receipt of the application, the Health Officer shall refer the application to the building inspection division, the fire department, and the police department, each of which within a period of 30 days from the date of application shall review records or make an inspection of the premises proposed to be used as a massage establishment and shall make a written recommendation to the Health Officer concerning compliance with the respective requirements.

(b) Within a period of 45 days from the date the application is filed, the Health Officer shall approve or deny the application. If the application is denied, the Health Officer shall send to the applicant by certified mail, return receipt requested, a written statement setting forth the reasons for denial. If the application is approved, the Health Officer shall notify the assessor and collector of taxes to issue a massage establishment license to the applicant.

(c) Massage establishment licenses shall expire December 31st of each year. The annual license fee shall be \$250.00 for each massage establishment. License renewals shall be made according to the same procedures required for original issuance.

Section 4. Facility requirements.

(a) Each massage room shall be equipped with at least one artificial white light of not less than 40 watts.

(b) The massage establishment shall comply with all other structural codes of the city.

Section 5. Sanitary requirements.

(a) It shall be the duty of every person conducting or operating a massage establishment to keep the same at all times in a clean and sanitary condition. All instruments and mechanical, therapeutic, and bathing devices, or parts thereof, that come into contact with the human body, shall be sterilized by a modern and approved method of sterilization before initial use, and any such instruments and devices, or parts thereof, after having been used upon one patron, shall be sterilized before being used upon another. All towels and linens furnished for use of one patron shall not be furnished for use of another until thoroughly laundered.

(b) All massage technicians shall wash their hands thoroughly before administering massage to each patron accommodated.

(c) No person suffering from a communicable disease shall work or be employed in a massage establishment.

(d) No person shall be accommodated as a patron within a massage establishment when to the knowledge of the operator, person in control, or an employee, such person is suffering from a communicable disease.

Section 6. Refusal to issue or renew license.

The Health Officer shall refuse to approve issuance or renewal of a massage establishment license for any one or more of the following reasons:

(a) Conviction in a court of competent jurisdiction of the applicant or any proprietor, partner, corporate officer, or employee thereof, for theft, fornication, sodomy, procuring, pandering, keeping a bawdy house, keeping an assignation house, engaging in prostitution or engaging in assignation.

(b) The making of any false statement as to a material matter in an application for license or license renewal.

(c) Conviction in a court of competent jurisdiction of the licensee, applicant or any employee thereof, for a violation of any provision of this ordinance.

(d) Revocation of a license, pursuant to this ordinance, of the applicant, any proprietor, partner or corporate officer therein, within 5 years preceding application.

(e) The employment of any person to administer massage, who is not the holder of a valid massage technician permit issued by the city.

(f) Failure of the applicant, any proprietor, to successfully complete a resident course of study at a recognized school, in the theory, method, profession and work of a massage technician or obtain a certificate for a registered physical therapist as above required.

Section 7. Massage technician permit required; application.

(a) It shall be unlawful for any person to practice or administer massage in a massage establishment within the city, unless such person has been issued and is the holder of a currently valid massage technician permit.

(b) Application for a massage technician permit shall be made to the Health Officer upon a form furnished by him, and shall include the following information:

(1) The applicant's full name, residence address, and residence telephone number.

(2) The name and address of the massage establishment and its owner where the applicant is to be employed.

(3) The names and addresses of all previous establishments where applicant has been employed as a massage technician.

(4) The criminal record, if any, other than misdemeanor traffic violations, of the applicant.

(5) Whether any permit to engage in the practice of massage has previously been denied applicant or revoked and, if so, the circumstances of such denial or revocation.

(6) The furnishing of a portrait photograph at least 2 inches by 2 inches, together with a complete set of applicant's fingerprints which shall be taken by the Chief of Police or his agent.

(7) Written proof that applicant is over the age of eighteen (18) years.

(8) A certificate from a medical doctor stating that the applicant has, within 30 days immediately prior to filing application, been examined and found to be free from any contagious and communicable disease or venereal disease.

(9) Applicant shall also furnish a diploma or certificate of graduation from a recognized school wherein the method, profession, and work of massage techniques are taught or a certificate from a registered physical therapist certifying that the applicant had received at least 10 hours of instruction and teaching of the theory, method, profession, or work of massage technicians.

Section 8. Permit investigation; Fee; Issuance, renewal.

(a) All applications for a massage technician permit shall be accompanied

by an investigation fee of \$25.00, no part of which shall be refundable. Upon receipt of the application, the Health Officer shall refer the application to the Police Department which, within a period of 10 days from the date of application shall make an investigation and submit a written recommendation thereon to the Health Officer concerning compliance with the requirement of this ordinance.

(b) Within a period of 20 days from the date the application is filed, the Health Officer shall approve or deny the application. If the application is denied, the director shall send to the applicant by certified mail, return receipt requested, a written statement setting forth the reasons for denial. If the application is approved, the Health Officer shall notify the assessor and collector of taxes to issue a massage technician permit to the applicant.

(c) Massage technician permits shall expire December 31st of each year. The annual permit fee shall be \$25.00. Permit renewals shall be made according to the same procedures required for original issuance.

Section 9. Refusal to issue or renew permit.

The Health Officer shall refuse to approve issuance or renewal of a massage technician permit for any one or more of the following reasons:

(a) Conviction in a court of competent jurisdiction of the application for theft, fornication, sodomy, procuring, pandering, keeping a bawdy house, keeping an assignation house, engaging in prostitution or engaging in assignation.

(b) The making of any false statement as to a material matter in an application for permit or permit renewal.

(c) Conviction in a court of competent jurisdiction, of the application for a violation of any provision of this ordinance.

(d) Failure of the applicant to successfully complete a resident course of study at a recognized school, in the theory, method, profession and work of a massage technician or obtain a certificate for a registered physical therapist as above required.

(e) Revocation of a permit, pursuant to this ordinance, of the applicant, within 5 years preceding application.

(f) Physician's examination indicates that the applicant is infected with a communicable disease.

Section 10. Revocation of license or permit.

(a) The Health Officer shall revoke a license or permit issued pursuant to this ordinance for any one or more of the following reasons:

(1) Conviction of the holder of such license or permit of an employee of a licensee, for the offense of theft, fornication, sodomy, procuring, pandering, keeping a bawdy house, keeping an assignation house, engaging in prostitution or engaging in assignation.

(2) Conviction of the holder of such license or permit of an employee of a licensee, for a violation of any provision of this ordinance, or other Law applicable to the operation of the massage establishment.

(3) That the holder is engaged in the practice of massage under a false or assumed name, or is impersonating another technician of a like or different name.

(4) That the holder is addicted to the habitual use of intoxicating liquors, narcotics or stimulants to such an extent as to incapacitate such person for the performance of his or her professional duties.

(5) That the holder is guilty of fraudulent, false, misleading or deceptive advertising, or that he or she prescribes medicines, drugs, or practices any other licensed profession without legal authority therefor.

(6) That the holder is guilty of negligence in the practice of massage, or has been guilty of employing, allowing or permitting any person to perform massage in his or her establishment, who is not the holder of a valid massage technician permit.

(b) Written notice of such revocation shall be given by the Health Officer to the holder of such license or permit at the holder's last known business address.

Section 11. Same - Appeal from refusal to grant or renew; from decision to revoke.

In the event the Health Officer shall refuse to approve the issuance of an original license or permit, or the renewal of a license or permit, to any applicant, or revokes the license or permit issued to any license or permit holder under this ordinance, this action shall be final unless the license or permit holder shall, within 10 days after the receipt of written notice of such action, file with the city administrator a written appeal. The city administrator shall, within 10 days after the appeal is filed, consider all the evidence in support of or against the action appealed, and render a decision either sustaining or reversing the action. If the city administrator sustains the action, the applicant, license or permit holder may, within 10 days of that decision file a written appeal with the city secretary to the city council. Such written appeal shall set forth the specific grounds therefor. The city council shall, within 30 days, grant a hearing thereon to consider the action, at which hearing the city council may make such

investigation as it may see fit. The city council shall have authority to sustain, reverse or modify the action appealed. Such decision of the city council shall be final.

Section 12. Hours of operation; living, etc., quarters therein prohibited.

No massage establishment shall be kept open for any purpose between the hours of 10:00 p.m. and 8:00 a.m., and no such establishment shall be operated or conducted in connection either directly or indirectly, with any place used for living or sleeping quarters.

Section 13. Inspection of massage establishments; examination of employees.

(a) The Health Officer shall be authorized to make or cause to be made inspections to determine the condition of any massage establishment in order to safeguard the health, safety, and welfare of the public and to make examinations through a licensed physician as are necessary to determine whether employees of the massage establishment are infected with any communicable disease.

(b) If in the opinion of the Health Officer or his designated representative, there is probable cause to enter a massage establishment for the purpose of making inspections and examinations pursuant to this ordinance, he shall request the owner or occupant thereof to grant permission for such entry, and if refused he shall make application to a magistrate for a search warrant, showing said magistrate why such search warrant should be issued for the purpose herein.

Section 14. List of employees.

The manager or person in charge of a massage establishment shall keep a list of the names and addresses of all employees, both on duty and off duty, and such list shall be shown to all proper authorities of the police and health departments upon request.

Section 15. Operation in residential area prohibited.

It shall be unlawful for any massage establishment to be operated in any section of the city which is zoned for residential purposes.

Section 16. Display of license and permits.

The owner or operator shall display the massage establishment license and the permit of each massage technician employed in the establishment in an open and conspicuous place of the premises.

Section 17. Notification of changes; nontransferability.

(a) Every massage establishment owner or operator shall report immediately to the Health Officer any changes of address or ownership of the massage establishment, and any changes or transfers of massage technicians employed in the business.

(b) Licenses and permits issued pursuant to this ordinance shall be non-transferable.

Section 18. Severance clause.

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, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 19. Penalty.

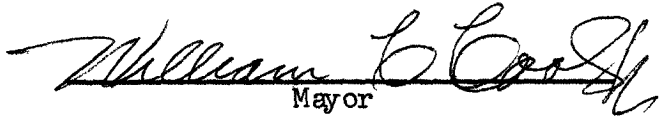
Any person violating any provision of this ordinance shall be guilty of a separate offense for each day or portion thereof during which any such violation is committed, continued or permitted and each offense shall be punishable by a fine of not less than \$25.00 and not to exceed \$200.00.

Section 20. The effective date.

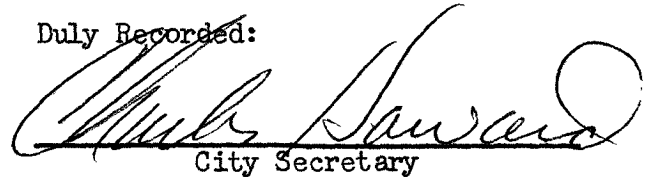
The fact that it is a massage establishment operating within the City of Addison and the fact that the City of Addison does not presently have an ordinance regulating massage establishments creates an urgency and an emergency in the preservation of public health, safety and welfare, and requires that this ordinance shall take effect immediately from and after its passage.

DULY ADOPTED by the City Council of the City of Addison on the 19th day of November, 1973.

Duly Approved:


Mayor

Duly Recorded:


City Secretary

Approved as to Form:


City Attorney