

ADDENDUM
Minnetonka City Council
Meeting of December 19, 2011

10D. Ordinance amending massage regulations

Attached is a change memo from the community development director with two recommended changes to the ordinance. A copy of the final version of the ordinance is attached.

Also included is a comment that was received after the council packet had been distributed.

Memorandum

To: City Council
From: Julie Wischnack, AICP, Community Development Director
Date: December 16, 2011
Subject: Change Memo for the December 19, 2011 City Council Agenda

#10D Ordinance Amending Massage Regulations:

Two changes have been recommended for the ordinance (see exhibit A for the final version):

810.055. Conditions of Licenses

12. Advertising for the massage business must not appear in publications or on websites that advertise sexually-oriented businesses, as defined in city code section 615. Massage businesses may advertise in publications or subsections of publications or websites which do not focus on sexually oriented businesses.

810.080. Inspection of Premises.

Because of the high risk of illegal conduct in an establishment that provides massages, massage businesses must be open to inspection without a warrant by city health, building and license inspectors and police officers during business hours. The business records of the licensee, including income tax returns, must be available for inspection ~~during the hours in which~~ upon request the licensed premises is open for business. Upon demand by a health inspector or police officer, a person engaged in providing services in a licensed premises must identify himself/herself giving his/her true legal name and his/her correct address.

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City Council Change memo

The following comment was received on December 15th:

From: Sandra Brandvold

Sent: Thursday, December 15, 2011 11:06 AM

To: James Hiller

Subject: Massage Ordinance

December 15, 2011

Massage Ordinance

Discussion for Dec 19th City Council Meeting

Dear Mr. Hiller,

I read the Lakeshore Weekly News article on the proposed changes to the city's massage ordinance.

While I am in agreement that there should not be 'erotic-massage' allowed in our city, I am concerned about the following proposed changes:

1. That the business cannot accept only cash.

I believe the wording in the ordinance about not being able to fondle or touch a client's private parts is adequate to determine if a business is a legitimate massage business or an erotic-massage business.

While cash payments may have been one of the indicators of the illegal massage business, regulating how a business conducts its financial transactions with its customers is not in the best interest of the city. Many people use only cash for financial transactions to avoid going into debt. And, having the business accept another form of payment, while still being able to accept cash, does not ensure that they are a legitimate massage business.

Therefore, I would like to see this portion of the proposed changes removed:

2. Massaging a client's buttocks but only if the client requests it and only for medical reasons.

I believe the 'only for medical reasons' should be removed from the ordinance.

Massage therapists in general are not qualified to determine if a client has medical reasons for needing their glut muscles massaged. And, the client should not be required to have a doctor provide this for them. The massage therapist can inform the client that if they request, their glut muscles can be massaged.

I have had my buttocks/glut muscles massaged many times with no inappropriate touching. The relaxation and stress relief gained is more important than the worry the police have of inappropriate touching. A trained massage therapist is able to massage the glut muscles without getting anywhere close to touching a client's private parts.

Inappropriate touching occurs because of intention to directly touch these parts of a client's body.

3. I believe additional wording needs to be added to the ordinance that will help protect a legitimate massage business from being closed down if it is discovered that an individual massage therapist has provided erotic-massage or inappropriately touched a client.

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City Council Change memo

This needs to be considered because a massage is given in private for the comfort of the client and due to the privacy, the business owner may be unaware of the actions of their employee. And, it is the word of the massage therapist compared to the word of the client. As a result, a whole business could be shut down due to the inappropriate actions of one individual.

Further investigation into the issue is needed to determine if it is the whole business. Every business is subject to an employee that will make poor decisions. So, the employee should be the one to suffer the consequences. If the business owner is also involved then yes, revoke the business license and close the business.

I propose the following wording:

If a massage therapist is charged with touching or fondling a client's private parts and found guilty of the offense, the individual massage therapist's license will be revoked.

As massage provides stress relief and relaxation, I approve of having such businesses in our city. They provide jobs and pay taxes, both good things. And, most trained massage therapists provide legitimate massage and do not want to be involved with erotic-massage.

There is no need to eliminate the good businesses due to the actions of a few.

Thank you for your time and attention.

Sandra Brandvold
16103 Temple Lane
Minnetonka, MN 55345

ORDINANCE NO. 2011-xx

AN ORDINANCE AMENDING CITY CODE SECTIONS 300.13, 615.02, AND 810
REGARDING MASSAGE ACTIVITIES

The City of Minnetonka Ordains:

Section 1. City code §300.33, subd. 3(e) is amended as follows:

e) "Specified sexual activities" - means:

- 1) Actual or simulated: sexual intercourse; oral copulation; anal intercourse; oral-anal copulation; bestiality; direct physical stimulation of unclothed genitals; flagellation or torture in the context of a sexual relationship; the use of excretory functions in the context of a sexual relationship; anilingus; coprophagy; coprophilia; cunnilingus; fellatio; necrophilia; pedophilia; piquerism; or zooerastia;
- 2) Clearly depicted human genitals in the state of sexual stimulation, arousal, or tumescence;
- 3) Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation;
- 4) Fondling or touching of nude human genitals, pubic regions, buttocks, or female breasts, except touching the buttocks of a person receiving a massage if done upon the person's request and only for medical purposes such as relieving pain or muscle soreness;
- 5) Situations involving a person or persons, any of whom are nude, who are clad in undergarments or in sexually revealing costumes and engaged in the flagellation, torture, fettering, binding, or other physical restraint of any person;
- 6) Erotic or lewd touching, fondling, or other sexually oriented contact with an animal by a human being; or
- 7) Human excretion, urination, menstruation, or vaginal or anal irrigation.

Section 2. City code §615.01, subd. 5 is amended as follows:

5. "Specified sexual activities" means:

- a. Actual or simulated: sexual intercourse; oral copulation; anal intercourse; oral-anal copulation; bestiality; direct physical stimulation of unclothed genitals; flagellation or torture in the context of a sexual relationship; the use of excretory

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functions in the context of a sexual relationship; anilingus; coprophagy; coprophilia; cunnilingus; fellatio; necrophilia; pedophilia; piquerism; or zooerastia;

b. Clearly depicted human genitals in the state of sexual stimulation, arousal, or tumescence;

c. Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation;

d. Fondling or touching of nude human genitals, pubic regions, buttocks, or female breasts, except touching the buttocks of a person receiving a massage if done upon the person's request and only for medical purposes such as relieving pain or muscle soreness;

e. Situations involving a person or persons, any of whom are nude, who are clad in undergarments or in sexually revealing costumes and engaged in the flagellation, torture, fettering, binding, or other physical restraint of any person;

f. Erotic or lewd touching, fondling, or other sexually oriented contact with an animal by a human being; or

g. Human excretion, urination, menstruation, or vaginal or anal irrigation.

Section 3. City code §810.005 is amended as follows:

810.005. Definitions.

Unless the context clearly indicates otherwise, the words below are defined for the purpose of this section as follows.

1. "Operate" means to own, manage or conduct.
2. "Within the city" includes physical presence as well as telephone referral situations, such as a "phone-a-massage" type operation, in which the business premises, although not actually located within the city, serves as a point of assignment of employees who respond to requests for services from within the city.
3. "Massage" means the method of treating the superficial parts of the human body, excluding the genitalia, pubic areas, and female breast, by rubbing, pressing, stroking, kneading, tapping, pounding, vibrating, or stimulating with the hands or an instrument for no other purpose than physical fitness, health-care referral, healing, relaxation, or beautification.

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- 4. "Sanitary" means free from pathogenic microorganisms.
- 5. "Adequate" or "approved" means acceptable to the health authority following his/her determination as to conformance with public health practices and standards.

6. "Massage business" means the offering of massage services to the general public, regardless of whether the offer is limited only to select invitees or organizational members.

Deleted: 6. "Masseur" means a male person who practices massage.}]
 7. "Masseuse" means a female person who practices massage.}]
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7. "Health care facility" means a person, association, business, organization or institution providing medical, surgical, dental, chiropractic, osteopathic or physical therapy services where practitioners are licensed by the state of Minnesota.

8. "Massage therapist" means a person administering massage who has completed either:

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- a. a minimum of 500 hours of class credits from a massage therapy school (1) that is currently in good standing and accredited by the accrediting bureau of health education schools, accrediting commission of career schools and colleges, accrediting council for independent colleges and schools, commission on massage therapy accreditation, higher learning commission, or national accreditation commission of cosmetology arts and sciences or (2) that is currently a school member in good standing of the associated bodywork and massage professionals, American massage therapy association, or national certification board for therapeutic massage and bodywork, or,

Deleted: (1) is a member in good standing of the american massage therapy association, the associated bodywork and massage professionals, or other national organization of therapeutic massage professionals that has a similar written and enforceable code of ethics; and has either (a) a practitioner's degree with

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b. at least two years of full-time experience working as a massage therapist at a licensed massage business that is not an adult massage parlor as defined in city code section 615.015.

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 (1) works in conjunction with and under the supervision of a person meeting the practitioner's requirement.

Section 4. City code §810.010 is amended as follows:

810.010. Massage Business License Required.

- 1. A person must not operate a massage business within the city unless the business is currently licensed under this section.
- 2. A massage business license may be granted only to an applicant that has insurance coverage of at least \$1,000,000 for personal liability in the practice of

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therapeutic massage, which provides coverage for all massage therapists working on the business premises. A massage business may satisfy this requirement by requiring each massage therapist working on the business premises to provide that person's own insurance coverage of at least \$1,000,000 for personal liability in the practice of therapeutic massage.

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Section 5. City code §810.020 is amended as follows:

810.020. License Application.

1. An application for a massage business license under this section must be filed with the community development department. The application must be made on a form supplied by the city and contain the following information:

a. whether the applicant is a natural person, a corporation, a partnership, or other form of organization;

b. if the applicant is a natural person:

(1) the true name, place and date of birth, resident address and phone number of the applicant;

(2) whether the applicant has ever used or has been known by a name other than his/her true name; and if so, what was such name or names and information concerning dates and places where used;

(3) the name of the business if it is to be conducted under a name other than the applicant's name; in which case, a copy of the certificate required by state law must be attached to the application;

(4) the street address at which applicant has lived during the preceding five years;

(5) the kind, name and location of every business or occupation the applicant has been engaged in during the preceding five years;

(6) the names and addresses of the applicant's employer(s) and partner(s), if any, for the preceding five years;

(7) whether the applicant has ever been convicted of a felony or other crime. If so, the applicant must furnish information as to the time, place and offense for each conviction;

- (8) the applicant's physical description; and
 - (9) whether the applicant has training or experience in performing massage services.
- c. if the applicant is a partnership:
- (1) the names and addresses of the partners and for each partner all information that is required of an individual applicant in subparagraph b, above;
 - (2) the name of the managing partner(s) and the interest of each partner in the business; and
 - (3) a true copy of the partnership agreement. If the partnership is required to file a certificate for a trade name under state law, a copy of that certificate must also be attached.
- d. if the applicant is a corporation or other organization:
- (1) the name; and if incorporated, the state of incorporation;
 - (2) a true copy of the certificate of incorporation, articles of incorporation or association agreement, and by-laws. If a foreign corporation, a certificate of authority to do business in Minnesota must also be attached; and
 - (3) the name of the manager or proprietor or other agent in charge of the business to be licensed and all information concerning this person(s) as is required in subparagraph b, above.
- e. for all applicants:
- (1) whether the applicant is licensed in other communities to run similar businesses, and if so, where;
 - (2) the names of the people providing massage who are or will be working for the applicant in the city of Minnetonka and certification that each meets the minimum requirements of a massage therapist contained in the definitions in section 810.005;
 - (3) whether the applicant has had an interest in, as an individual or as part of a corporation, partnership, association, enterprise, business or firm, a massage license that was denied (either initially or upon renewal), revoked, or suspended within

Deleted: masseurs and masseuses

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the last ten years;

- (4) the location of the business premises;
- (5) proof of the insurance required in section 810.010; and
- (6) other information as the city may require.

2. A licensee must promptly notify the director of community development of a change in the information or facts required to be furnished on the application for a license, even after the license has been issued.

Section 6. City code §810.025 is amended as follows:

810.025. Execution of Application.

An application for a license must be signed and sworn to. If the applicant is a natural person, the application must be signed and sworn to by that person; if a corporation, by an officer of the corporation; if a partnership, by one of the partners; and if an unincorporated association, by the manager or managing officer of the association. The applicant must also submit a signed and notarized acknowledgement that the applicant has read and understands the requirements of this section 810.

Section 7. City code §810.035 is amended as follows:

810.035. Persons Ineligible for a License.

No license may be issued to an applicant who:

1. is under 18 years of age;
2. has been convicted of a crime directly related to the occupation and has not shown competent evidence of sufficient rehabilitation and present fitness to perform the duties and responsibilities of a licensee as required by Minn. Stat. § 364.03, subd. 3.
3. is not a citizen of the United States, unless the person is a resident alien or holds a valid work permit;
4. had an interest in, as an individual or as part of a corporation, partnership, association, enterprise, business or firm, a massage license that was denied (either initially or upon renewal), revoked, or suspended within the last ten years;

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- 5. is not of good moral character or repute;
- 6. owes taxes, assessments, or other financial claims to a governmental agency that are due and delinquent; or
- 7. is not the real party in interest of a massage business.

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Section 8. City code §810.045 is amended as follows:

810.045. Granting of Licenses.

1. Application process.

a. An application for a massage business license will be referred to the police department for investigation of the facts set forth in the application. The police department must prepare a written recommendation regarding issuance of the license. The community development director may conduct additional investigation as he/she deems necessary.

b. The community development director will make the determination whether to approve or deny the license. A denial must be communicated to the applicant in writing specifying the reasons for denial. The applicant may appeal this denial to the city council within 10 days of the date of the denial by submitting a request in writing.

c. Applications for license renewals must be submitted to the community development director at least 30 days before the license expiration. The director will decide whether to approve or deny the license renewal. A denial must be communicated to the applicant in writing specifying the reasons for denial. The applicant may appeal the denial following the procedure in section 700.025 of this code.

2. Grounds for denial. A license may be denied for any of the following reasons:

- a. fraud or deception in the license application;
- b. history of violations of laws and ordinances that apply to health, safety or moral turpitude;
- c. bad repute;
- d. convictions of crimes or offenses involving sexual misconduct;
- e. ineligibility for a license under section 810.035;

f. failure to comply with any provision of this section 810; and

g. other matters deemed to be relevant by the community development director or city council.

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Section 9. City code §810.055 is amended as follows:

810.055. Conditions of Licenses.

1. A massage business must not employ or use a person as a message therapist on the licensed premises unless that person meets the definition of a massage therapist in section 810.005.

Deleted: masseur or masseuse

a. When hiring or contracting with a massage therapist, the licensee must (1) document that the person meets the definition of a massage therapist in section 810.005, (2) obtain from each massage therapist a signed and notarized acknowledgement that he or she has read and understands the requirements of this section 810, and (3) obtain a list of any convictions that the massage therapist has that are related to prostitution or violations of massage regulations. The licensee must maintain this information in its records and must provide the information for all massage therapists to the city whenever it is requested and as part of its annual license renewal. Failure to provide complete and timely information will subject the licensee to the penalties provided in this code and to potential denial of a renewed license.

b. The director may cause an investigation of a massage therapist and may disapprove the employment of, or contracting with, the person by notice to the licensee in writing.

c. The licensee may appeal the director's decision to the city council by placing a request in writing to the city clerk within ten days after the issuance of the notice. A failure to request an appeal waives the licensee's ability to contest the director's decision. After the appeal period has expired without an appeal, or the city council has upheld the director's decision upon an appeal, no massage therapist who has been disapproved may operate in that capacity upon the licensed premises.

2. A massage business must have its license or a true copy of it, displayed in a prominent place on the licensed premises.

3. A massage business must not discriminate on grounds of race, color, creed, religion, national origin, sex, marital status, disability, sexual orientation, and status with regard to public assistance in performing services offered by the licensed establishment.

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The stricken language is deleted; the underlined language is inserted.

4. The person who is receiving the massage must at all times have his/her buttocks, anus and genitals covered with an appropriate non-transparent covering.

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5. A male performing massages must at all times have his anus, buttocks and genitals covered with a non-transparent material.

Deleted: masseuse

6. A female performing massages must at all times have her breasts, buttocks, anus and genitals covered with a non-transparent material.

7. A person providing massage must not fondle or touch the genitals, pubic regions, penis, scrotum, mons veneris, vulva, vaginal area or female breasts of the person receiving the massage. A person providing massage must not touch the buttocks of the person receiving the massage, except upon the person's request and only for medical purposes, such as relieving pain or muscle soreness.

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8. A licensee, or any employee of the licensee, must not solicit business or perform massage services, and must not allow, encourage or direct his/her employee to solicit business or perform massage services, while the license is under suspension or revocation.

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9. A licensee must not permit the possession or consumption of alcoholic beverages or illegal controlled substances on the licensed premises.

10. The exterior windows of the licensed premises must not be covered during hours that the licensed premises is open for business, except for windows in massage rooms and restrooms.

11. A massage business must not accept only cash as payment for services.

12. Advertising for the massage business must not appear in publications or on websites that advertise sexually-oriented businesses, as defined in city code section 615. Massage businesses may advertise in publications or subsections of publications or web sites which do not focus on sexually oriented businesses.

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13. A licensee and its employees and agents must comply with all of the provisions of this section 810. A licensee is strictly responsible for the conduct of the massage business, including the actions of any employee, independent contractor, or agent of the licensee on the licensed premises.

Section 10. City code §810.060 is amended as follows:

810.060. Suspension or Revocation of License.

The ~~stricken~~ language is deleted; the underlined language is inserted.

1. The community development director may suspend, revoke, or not renew a license upon a showing that the licensee, its owner, manager, employee, independent contractor, or agent has engaged in any of the following conduct:

- a. failure to comply with city ordinances or state law;
- b. control or possession of alcoholic beverages or illegal controlled substances on the premises;
- c. conviction of a violation of any ordinance or state statute, arising on the licensed premises;
- d. conviction of prostitution or another crime involving moral turpitude; ,
- e. failure to promptly notify the community development director of a change in the information required to be submitted in a license application;
- f. fraud, deception or misrepresentation in connection with securing the license;
- g. other rational reasons related to public health, safety, or welfare.

2. Before taking action, the director must notify the licensee in writing by certified mail ten days in advance of his/her intended action stating the reasons for it and giving the licensee an opportunity to present evidence related to the matter. The director must notify the licensee of the final decision in writing by certified mail.

3. A licensee may appeal the community development director's action by submitting an appeal in writing to the city clerk within ten days after the date of the director's action. A hearing on the appeal must be conducted in accordance with section 700.035, subd. 2(c) and (d) of this code.

4. A license is automatically revoked if the licensee does not respond to a charge of violating a provision of this section 810 within the time established by the district court. The community development director must notify the licensee of this automatic revocation by certified mail.

Section 11. City code §810.070, subdivision 7 is amended as follows:

7. A separate hand-sink must be accessible and used by a massage therapist before administering massage on each patron and when hands are soiled.

Deleted: The city may suspend or revoke a license issued under this section. A suspension or revocation must be accomplished following the procedure in section 700.035 of this code. The following are grounds for suspension or revocation of a license

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Section 12. City code §810.080 is amended as follows:

810.080. Inspection of Premises.

Because of the high risk of illegal conduct in an establishment that provides massages,
massage businesses must be open to inspection without a warrant by city health,
building and license inspectors and police officers during business hours. The business
records of the licensee, including income tax returns, must be available for inspection
upon request. Upon demand by a health inspector or police officer, a person engaged in
providing services in a licensed premises must identify himself/herself giving his/her true
legal name and his/her correct address.

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Section 13. A violation of this ordinance is subject to the penalties and provisions of
Chapter XIII of the city code.

Section 14. This ordinance is effective 30 days after publication.

Adopted by the city council of the City of Minnetonka, Minnesota, on December 19,
2011.

Terry Schneider, Mayor

ATTEST:

David E. Maeda, City Clerk

ACTION ON THIS ORDINANCE:

Date of introduction: December 5, 2011
Date of adoption: December 19, 2011
Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:

The ~~stricken~~ language is deleted; the underlined language is inserted.

Abstained:
Absent:
Ordinance adopted.

Date of publication:

CERTIFIED COPY:

I certify that the foregoing is a correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota, at a meeting held on December 19, 2011.

David E. Maeda, City Clerk

The ~~stricken~~ language is deleted; the underlined language is inserted.