

---

# CITY OF MOTLEY

---

## BOARD OF ADJUSTMENT/ PLANNING COMMISSION

MEETING PACKET FOR  
**February 24, 2015**



CITY OF MOTLEY  
PLANNING AND ZONING COMMISSION  
AGENDA  
February 24, 2015  
6:00 pm – Motley City Hall

---

1. Call to Order
2. Roll Call
3. Public Hearings  
*(NOTE: members of the public wishing to comment on a particular public hearing will be given an opportunity during the appropriate public hearing)*
  - a. None
4. Additions or Deletions to Agenda
5. Open Forum  
*(NOTE: the open forum is an opportunity for members of the public to comment on any item not related to a specific agenda item, but relating to land use regulations or planning within the City)*
6. Approval of Minutes
  - a. January 2015
7. Planning and Zoning Administrator's Report
8. Other Business
  - a. Discussion – Regulation of land uses within zoning districts
  - b. Discussion – Massage Business/Therapist Licensing
  - c. Training Session (if time allows)
9. Adjournment

This agenda is not exclusive. Other business may be discussed as deemed necessary.

**Members of the public:**

*Please see the next page for the City of Motley's policy regarding "Standards of Conduct at Public Meetings".*

**CITY OF MOTLEY  
STANDARDS OF CONDUCT AT PUBLIC MEETINGS**

The City Council encourages good-faith testimony from its citizens and desires to provide an environment based on respect and civility. In order to do so, the City Council of the City of Motley has established the following Standards of Conduct at Public Meetings, based on the norms of acceptable and courteous business behavior:

1. Members of the audience wishing to address the Council shall first secure the permission of the Chairperson.
2. Members of the audience will refrain from disruptive actions such as hand clapping, stamping of feet, whistling, cheering, yelling or similar demonstrations, which conduct disturbs the peace and good order of the meeting and which conduct might have an intimidating effect upon members of opposing viewpoints.
3. Persons addressing the City shall also refrain from slurs against race, creed, color, religion, national origin, gender, sexual or affectional orientation, marital status, familial status, age, disability, or status with regard to public assistance.
4. Profanity, slander, false statements, violence, or the threat of violence in any form shall not be tolerated.
5. City Officials shall also comply with these **STANDARDS OF CONDUCT**, the City of Motley's **CODE OF ETHICS FOR PUBLIC OFFICIALS** and the **CITY OF MOTLEY CONFLICTS OF INTEREST POLICY**.

Violations of these **STANDARDS** shall be determined by the opinion of the Chairperson of the meeting or, absent such opinion, by the opinion of the majority of the members of the deliberating body.

1. Any person violating these standards shall be called to order by the Chairperson of the meeting. If such conduct continues, said person may, at the discretion of the Chairperson, lose the floor. With the exception of Elected Public Officials (e.g. City Council) at City Council meetings, said person may be denied further audience before the City for that meeting.
2. If said person refuses to come to order and obey the directives of the Chairperson of the meeting, the Chairperson may request that said person leave the building. An exception to this is made for Elected Public Officials at City Council meetings as protected by law.

CITY OF MOTLEY  
PLANNING AND ZONING COMMISSION MINUTES  
January 27, 2015, 6:00 PM

1. Call to Order

O'Regan called the meeting to order at 6:00 p.m.

2. Roll Call

Planning commission: Pat O'Regan, Nancy Nieken, Amy Hutchison, Al Yoder, Steve Johnson

Absent: None

Staff: Terri Smith

Hometown Planning: Ben Oleson

Public: None

3. Public Hearings

None

4. Additions or Deletions to the Agenda.

Voting for Officers

Chairperson – A motion and second were made to appoint O'Regan as Planning Commission Chairperson. Motion passed unanimously.

Vice-Chair – A motion and second were made to appoint Hutchison as Planning Commission Vice-Chairperson. Motion passed unanimously.

Secretary – A motion and second were made to appoint Yoder as Planning Commission Secretary. Motion passed unanimously.

5. Open Forum

There were no persons present wishing to speak.

6. Approval of Minutes

A motion and second were made to adopt the May and October 2014 minutes of the Planning Commission. Motion passed unanimously.

7. Planning and Zoning Administrator's Report

Oleson stated that he did not have any significant news to report other than what was listed as a separate item under Other Business on the agenda.

## 8. Other Business

### a. Massage Business

Oleson described a question he had received from a citizen about his wife starting a massage business in the C-2 zoning district within a motel building as a monthly lease arrangement. He noted that the ordinance doesn't specifically list out that kind of business and that businesses not listed are considered prohibited by the ordinance, although there are many types of businesses that aren't specifically listed in the ordinance – as has been discussed in the past by the Planning Commission. Oleson also noted that a number of cities have adopted licensing requirements for massage-related businesses that include background checks, references for the owners and/or requirements that therapists have a certain amount of education or experience. Finally, Oleson noted that if the business is to be located in motel building, the ordinance would seem to require a conditional use permit as an "professional service building." Hutchison asked about certification of massage therapists. Oleson noted his understanding is that neither the state nor county licenses massage therapists based on some limited research and a conversation with Morrison County Public Health staff. O'Regan feels the City should have an ordinance regulating massage therapists and/or businesses. Yoder asked about needing CUP to have businesses in the motel. Oleson said he felt that was necessary given the ordinance language. General concern was expressed over properly regulating such businesses as well as a motel housing businesses out of rooms. Nieken noted possibility of operating out of another local office – spa/salon, etc... Hutchison prefers that an ordinance be written to regulate licensing; O'Regan agreed. O'Regan noted the ordinance can't list every possible use.

The consensus of the Commission was that a massage business needed to be considered prohibited given the ordinance language and that the motel owner would need a CUP to lease space to businesses as a professional services building.

The Commission also stated that it needs to review the listing of businesses and how land uses are regulated in each district. Oleson noted that some communities do not prohibit unlisted uses, but instead leave it up to the Commission to decide whether they feel it is a proper use in the district. Others focus on regulating the impacts of potential land uses rather than the specific type. Oleson was directed to put together a short summary of the options available to the City and to present a few examples from other communities. This information should be sent to the Commission as soon as possible so that they have time to review prior to the February 2015 Planning Commission meeting, where they would like to discuss. Oleson was directed to attend the February meeting for this purpose.

Oleson was also asked to present an example licensing ordinance for massage-related businesses/therapists at the February meeting.

### b. Training Session – Zoning 101 Basic Terms and Zoning

Oleson presented a training session regarding the basic terms and arrangement of the City's current zoning ordinance.

b. Work Plan

A motion was made and seconded to adjourn the meeting. The meeting was adjourned at 7:15 p.m.

Respectfully submitted,  
Ben Oleson  
Hometown Planning

DRAFT

## STAFF REPORT

---

**Issue:** Regulation of land uses within zoning districts

**Agenda Item:** 8(a)

---

### **Background Information:**

- **Issue:** The current zoning ordinance for the City of Motley regulates the types of uses that are allowed within each zoning district. It does this by listing out various types of land uses (i.e. various types of residential, commercial and industrial uses – i.e. single family residential, multi-family residential, retail uses, restaurants, warehousing, manufacturing, etc...) and listing whether that use is permitted, requires a conditional use permit, or is not allowed at all.

If a use is not listed in the table, then it is considered prohibited. The only way to allow such a use is to amend the ordinance each time that it is deemed appropriate by the City after putting the matter to a public hearing.

This is not an uncommon approach and represents probably the most conservative and cautious manner in which to regulate land uses. The idea for communities that take this approach is basically that they want to be very deliberate about what they allows in each district and don't want to take the chance that a particular use that might cause problems is allowed without some thought and public input.

The downside of this approach is that it can be very cumbersome and time-consuming for landowners that are looking to begin a new business or construction on a certain building and find that they need to wait 1-3 months for a public hearing process to go through – with no guarantee that they will ultimately get the result they are looking for. In some cases, it could possibly be enough of a roadblock to businesses, in particular, that could just as easily start in another community that doesn't require the extra time and effort and uncertainty.

As discussed at the January 2015 meeting, the Planning Commission requested that Staff provide them with some examples from other communities as to various ways of regulating land use.

Staff has attached examples from three different communities, as follows:

1. City of Pequot Lakes – this method is the most similar to what the City of Motley's ordinance currently has. A table listing out various land uses that are permitted, conditional uses, or prohibited within each district. Anything not listed is considered prohibited.
2. Alexandria Township – the method here is to list out a variety of land uses under the general headings of residential, commercial, industrial, etc... Each use is listed as being permitted, conditional, prohibited, etc... You'll notice at the end of each category there is a listing that essentially says that uses not listed can be allowed as an interim use provided the Township determines it is a use that is similar to or otherwise compatible with the district. All uses that fall in this category would require a public hearing.

3. City of Garfield - Garfield uses a method that provides the greatest flexibility and does not really try to list out specific uses (i.e. restaurant, insurance sales, retail store, retail sales with/without outdoor storage, etc...). Instead, it essentially identifies "performance standards" for uses. For instance, a commercial use might be allowed provided that it is only open during certain hours, all storage or items for sale are inside a building, there are no unusual noises, dust, glare, etc..., and parking needs are limited to a certain number of parking spaces. Whether that use was a retail operation, a service or even some type of industrial use would not matter as much as how it was operated and laid out.

---

**Staff Comments:** Each of these approaches obviously have pros and cons associated with them. After reviewing and discussing these various approaches, if the City would like to take a different approach than what it currently has in its ordinances, Staff could be directed to begin drafting proposed amendments to the ordinance. Before any changes could be made, a public hearing would be required. The types of changes that would be made under each approach could be summarized as follows:

1. **Keep the same basic approach as exists now (the Pequot Lakes/Motley approach):** If the City wants to keep the same approach it has now (unlisted uses are prohibited), Staff would suggest that the ordinance could be improved by going through the existing matrix and adding/subtracting various uses so that the listing is more complete and avoids unnecessary delays for landowners and business owners. Additional effort could be made to define a number of the uses listed so that there is less confusion over what falls under each listing.
2. **Continue to list out specific uses, but allow unlisted uses after consideration by the City at a public hearing (the Alexandria Township approach):** The same type of work as in #1 above would be recommended, but specify that unlisted uses can be allowed after consideration by the City. A public hearing would be required, but an actual change to the text of the ordinance would not necessarily be a result.
3. **Change to an approach that regulates how businesses operate rather than the specific type of business (the Garfield approach):** Develop a list of criteria or performance standards that businesses, residential, industrial, etc... must meet to be located within a certain district rather than trying to list out specific uses. Any businesses that cannot meet those criteria would either be allowed after a public hearing or expressly prohibited. Unique or special uses that are of particular concern could be listed as prohibited.

**Section 17-5.15 LAND USE MATRIX**

1. The land use matrix shown in Table 1 establishes the allowable, permitted, accessory, conditional and excluded uses within the City of Pequot Lakes.
2. All uses are considered prohibited unless specifically allowed in this Code, even if they are not listed specifically under excluded uses.
3. All accessory uses require a permit, unless otherwise indicated.

A- allowed w/o a permit, P - permitted, C- conditional use, AC - accessory use, E - excluded

<u>USE</u>	<u>OS</u>	<u>FM</u>	<u>AG</u>	<u>WR</u>	<u>SR</u>	<u>TR</u>	<u>RR</u>	<u>DMU</u>	<u>C</u>	<u>SC</u>	<u>R</u>	<u>UR</u>	<u>LI</u>
Abandoned Building	E	E	E	E	E	E	E	E	E	E	E	E	E
Abandoned Motor Vehicle	E	E	E	E	E	E	E	E	E	E	E	E	E
Accessory Structure	E	AC	AC	E	AC	AC	AC	AC	AC	AC	AC	AC	AC
Adult Use	E	E	E	E	E	E	E	E	E	E	E	E	C
Agricultural Use	A	A	A	E	E	E	A	E	E	E	E	E	E
Airport	E	E	E	E	E	E	E	E	E	E	E	E	E
Animals, Domestic	E	A	A	E	A	A	A	A	A	A	A	A	A
Animals, Food	A	A	A	E	E	A	A	E	E	E	E	E	E
Animals, Wild	E	E	E	E	E	E	E	E	E	E	E	E	E
Animal Boarding Facility	E	C	C	E	E	E	C	E	C	E	E	E	C
Animal Grooming Establishment	E	P	P	E	C	C	C	P	P	C	E	C	P
Animal Husbandry	E	C	A	E	E	E	C	E	E	E	E	E	E
Antenna	E	A	A	E	A	A	A	P	A	A	A	P	A
Artist's Studio	E	AC	AC	E	AC	AC	AC	P	P	AC	P	AC	P
Auto Salvage Yard	E	E	C	E	E	E	E	E	E	E	E	E	C
Banner	E	E	AC	E	AC	AC	AC	AC	AC	AC	AC	AC	AC
Bed and Breakfast	E	C	C	E	C	C	C	C	E	P	C	C	E
Billboards	E	E	E	E	E	E	E	E	E	E	E	E	E
Boat Access	E	E	E	E	C	E	E	E	E	C	E	E	E
Boat House	E	E	E	E	E	E	E	E	E	E	E	E	E
Campground	E	C	C	E	E	E	C	E	E	C	C	E	E
Camping	E	A/P	A/P	E	A/P	A/P	A/P	A/P	E	A (5)	A/P	A/P	E
Cemetery	C	C	C	E	E	E	C	E	C	E	E	C	E
Child Care, Center	E	C	C	E	E	C	C	P	P	C	C	C	AC
Child Care, Family Home	E	A	A	E	A	A	A	A	A	A	A	A	E
Church	E	C	C	E	E	C	C	C	P	C	P	C	E
Commercial Use (Other, Not Classified)	E	E	E	E	E	E	E	C	C	E	E	E	P
Community Park	A	A	A	E	A	A	A	A	A	A	A	A	A
Controlled Access Lot	E	E	E	E	C	E	E	E	E	C	E	E	E
Conservation Subdivision	P	P	P	E	E	P	P	E	E	E	E	E	E
Conservation Subdivision, Shoreline	E	E	E	E	P	E	E	E	E	P	E	E	E
Conventional Subdivision	C	C	C	P	C	C	C	P	P	P	P	P	P
Deck	E	AC	AC	E	AC	AC	AC	AC	AC	AC	AC	AC	AC
Dock	A	E	E	A	A	E	E	E	E	A	E	E	E

A- allowed w/o a permit, P - permitted, C- conditional use, AC - accessory use, E - excluded

<u>USE</u>	<u>OS</u>	<u>FM</u>	<u>AG</u>	<u>SR</u>	<u>TR</u>	<u>RR</u>	<u>DMU</u>	<u>C</u>	<u>SC</u>	<u>R</u>	<u>UR</u>	<u>LI</u>	
Dwelling, Apartment	E	AC	AC	E	AC	P	AC	P	C	AC	AC	P	C
Dwelling, Guest Quarters	E	AC	AC	E	AC	AC	AC	AC	AC	AC	AC	AC	E
Dwelling, Multi-Family	E	p	p	E	C	P	P	P	C	C	C	P	E
Dwelling, Single Family	E	P	P	E	P	P	P	P	C	P	C	P	E
Exterior Storage	E	AC (6)	AC (6)	E	AC (6)	AC (6)	AC (6)	C	C	AC (6)	AC (6)	AC (6)	AC
Extractive Use	E	C (11)	C (11)	E	E	E	E	E	E	E	E	E	E
Feedlot	E	E	E	E	E	E	E	E	E	E	E	E	E
Fence	A	A	A	E	A	A	A	P	P	A	A	P	A
Fish House	E	AC (6)	AC (6)	A	AC (6)	AC (6)	AC (6)	A (7)	A (7)	AC (6)	E	AC (6)	A (7)
Forest Land Conversion	E	E	E	E	E	E	E	E	E	E	E	E	E
Garage, Attached	E	AC	AC	E	AC	AC	AC	AC	AC	AC	AC	AC	AC
Grading	C	A/P (3)	A/P (3)	E	A/P/C (3)	A/P (3)	A/P (3)	A/P (3)	A/P (3)	A/P/C (3)	A/P (3)	A/P (3)	A/P (3)
Group Care Facilities	E	C	C	E	E	C	C	P	P	C	C	C	E
Home Occupation, Type I	E	A	A	E	A	A	A	A	A	A	E	A	E
Home Occupation, Type II	E	A	A	E	A	A	A	A	A	A	E	A	E
Home Occupation, Type III	E	C	C	E	C	C	C	P	P	P	E	C	E
Home Occupation, Type IV	E	C	C	E	C	C	C	P	P	P	E	C	E
Hotel	E	E	E	E	E	E	E	P	P	C	C	E	E
Industrial Use	E	C	C	E	E	E	E	E	E	E	E	E	P
ISTS	C	P	P	E	P	P	P	P	P	P	P	P	P
Junk Yard	E	E	C	E	E	E	E	E	E	E	E	E	E
Landfill	E	E	E	E	E	E	E	E	E	E	E	E	E
Logging	E	A	A	E	E	E	A	E	E	E	C	E	E
Marina	E	E	E	E	E	E	E	E	E	C	E	E	E
Mobile Home Park	E	E	E	E	E	C(4)	C(4)	E	E	E	E	E	E
Motel	E	E	E	E	E	E	E	P	P	C	C	E	E
Nursery	E	C	C	E	E	E	C	P	P	E	E	E	E
Nursing Home	E	C	C	E	E	C	C	P	P	C	C	C	E
Off-street parking	AC	A	A	E	A	A	A	A	A	A	A	A	A
Open Storage	E	A(8)	A(8)	E	A(8)	A(8)	A(8)	A(8)/C	P	A(8)	P	A(8)	P

A- allowed w/o a permit, P - permitted, C- conditional use, AC - accessory use, E - excluded

<u>USE</u>	<u>OS</u>	<u>FM</u>	<u>AG</u>	<u>WR</u>	<u>SR</u>	<u>TR</u>	<u>RR</u>	<u>DMU</u>	<u>C</u>	<u>SC</u>	<u>R</u>	<u>UR</u>	<u>LI</u>
Patio	E	AC	AC	E	AC	AC	AC	AC	AC	AC	AC	AC	AC
Porch	E	AC	AC	E	AC	AC	AC	AC	AC	AC	AC	AC	AC
Public Use	P	P	P	P	P	P	P	P	P	P	P	P	P
Recreational Vehicle	E	A(8)(9)	A(8)(9)	E	A(8)(9)	A(8)(9)	A(8)(9)	A(7)(8)(9)	A(7)	A(8)(9)	A(8)(9)	A(8)(9)	A(7)
Recreational Vehicle Resort	E	C (10)	C (10)	E	E	E	C (10)	E	E	E	C (10)	E	E
Resort	E	C	E	E	E	E	E	C	C	C	C	E	E
Restaurant	E	E	E	E	E	E	E	P	P	P	AC	E	E
Retail Use	E	E	E	E	E	E	E	P	P	AC	E	E	AC
Signs, Directory	E	A	A	E	P	P	P	P	P	P	P	P	P
Signs, Dynamic Display	E	E	E	E	E	E	E	P	E	E	E	E	E
Signs, Offsite	E	E	E	E	E	E	E	E	E	E	E	E	E
Signs, Onsite	E	AC	AC	E	AC	AC	AC	AC	AC	AC	AC	AC	AC
Signs, Portable	E	A (1)	A (1)	E	E	E	A (1)	A (1)	A (1)	A (1)	A (1)	A (1)	A (1)
Temporary Structure	E	A	A	E	A	A	A	A	A	A	A	A	A
Vegetation Removal, Clear Cutting	E	E	E	E	E	E	E	E	E	E	E	E	C
Vegetation Removal, Intensive	P	P	P	E	E	E	P	E	E	E	P	E	P
Water Oriented Accessory Structure or Facility	E	E	E	E	E	E	E	E	E	E	E	E	E
Warehousing	E	AC	AC	E	AC	AC	AC	AC	AC	AC	AC	AC	P
Warehousing, Commercial	E	E	C	E	E	E	E	E	E	E	E	E	E
Telecommunication Tower	E	C	C	E	E	E	E	E	E	E	E	E	E

- (1) Consistent with the provisions of Section 7.1
- (2) See Section 5.6, Subdivision 8B
- (3) In Shore Impact Zone (cumulative from natural state):
  - Less than 10 CY requires a permit
  - More than 10 CY, Less than 50 CY requires a CUP
  - Greater than 50 CY excludedIn Lake Setback outside of Shore Impact Zone
  - Less than 50 CY requires a permit
  - More than 50 CY requires a CUPOutside of Lake Setback
  - Less than 100 CY is allowed
  - 100 CY or more requires a CUP
- (4) Provided for as a Planned Unit Development
- (5) In designated campgrounds only.
- (6) As per the standards set forth in Section 7.5, Subdivision 1
- (7) Only as part of a retail sales commercial use.
- (8) Only as provided for in Section 7.5.
- (9) Consistent with the standards contained in Section 7.14
- (10) Consistent with the standards listed in Section 6.3

**ARTICLE 5. ZONING DISTRICTS AND DISTRICT PROVISIONS**

**5.1 GENERAL**

- A. The City of Garfield is hereby divided into Zoning Districts as shown on the official Zoning Map.
- B. The boundaries are generally on the center of the streets, on lot lines, on shorelines, on the center of streams or rivers, and following the contour of the land.
- C. The following districts are hereby established

Downtown Mixed Use District .....	DMU
Single-Family Residential District.....	R-1
Medium-Density Residential District .....	R-2
High-Density Residential District.....	R-3
Highway Commercial/Light Industrial .....	HCI
Rural Industrial .....	RI
Open Space District .....	OS

**5.2 DMU DOWNTOWN MIXED USE**

A. Purpose. The purpose of the Downtown Mixed Use (DMU) District is to establish and preserve areas for a mix of commercial, light industrial and residential uses that are not incompatible and/or that help to promote beneficial economic activity and a vibrant social life for city residents. Regulation of public and private development in this district is intended to promote an environment that is convenient and attractive for pedestrians as the first priority. The DMU District is intended to make efficient use of public infrastructure by generating sufficient values to support public infrastructure and services. Uses that might otherwise accomplish these objectives, but that are likely to create serious problems of compatibility with current or anticipated surrounding land uses should not be located in DMU district.

B. Permitted Uses

1. Any commercial use where:

- a. the use of the property is primarily for retail or service activities, and;
- b. activities of the commercial are completely contained within a building (except for a limited outdoor storage area of 200 sq ft or less)
- c. the space used by a single tenant does not exceed thirty-thousand (30,000) square feet in gross floor area (excepting a basement or attic space)
- d. the hours of operation are between 7:00am and 10:00pm
- e. loading and unloading areas do not cover more than 30% of the lot area
- f. the use would not expose the surrounding area to significant noise, dust, vibrations, glare or other nuisance characteristics.

- g. wastewater generated on the property shall not be in an amount or of a type that would excessively burden municipal sewer treatment abilities or capacities.
  - h. water consumed by activities on the property shall not be in an amount that would excessively burden the municipal water supply system.
2. Any industrial or similar use involving the manufacture, assembly, packaging or processing of products in a manner where:
    - a. the activities of the business are completely contained within a building (no outdoor storage of materials, equipment or waste materials except as would normally be associated with any business)
    - b. the space used by a single tenant does not exceed thirty-thousand (30,000) square feet in ground floor area (excepting a basement or attic space)
    - c. the hours of operation are between 7:00am and 7:00pm
    - d. loading and unloading areas do not cover more than 30% of the lot area
    - e. there are no overhead doors or other openings to the building which are left open and would expose the surrounding area to significant noise, dust, vibrations, glare or other nuisance characteristics.
    - f. wastewater generated on the property shall not be in an amount or of a type that would excessively burden municipal sewer treatment abilities or capacities.
    - g. water consumed by activities on the property shall not be in an amount that would excessively burden the municipal water supply system.
  3. Any residential use, subject to the following:
    - a. It is a permitted use in the R-1, R-2 or R-3 Residential districts
    - b. Apartment buildings, up to a maximum of 12 units
  4. Churches, and other places of worship.
  5. Schools
  6. Government and Civic Buildings
  7. Hospitals and Clinics

**C. Conditional Uses**

1. Any commercial or industrial use with hours of operation between the hours of 10:00 pm and 7:00 am.
2. Any use which will be served by greater than ten (10) off-street parking spaces.
3. Any use of a building by a single tenant which exceeds thirty-thousand (30,000) square feet in gross floor area (excepting a basement or attic space).
4. Any legitimate use provided it is of the same general character as those listed under Permitted Uses, but that do not meet the specific criteria required for a Permitted Use, and provided they are deemed fitting and compatible to the district by the City Council.

**D. Lot and Structure Requirements**

To provide a zoning classification for commercial and light industrial uses oriented around the automobile and/or that require significant off-street parking or outdoor storage and product display areas.

**B. Permitted Uses**

1. Any commercial use where:

- a. the use of the property is primarily for retail or service activities, and;
- b. the use would not expose the surrounding area to significant noise, dust, vibrations, glare or other nuisance characteristics.
- c. wastewater generated on the property shall not be in an amount or of a type that would excessively burden municipal sewer treatment abilities or capacities.
- d. water consumed by activities on the property shall not be in an amount that would excessively burden the municipal water supply system.

2. Any industrial or similar use involving the manufacture, assembly, packaging or processing of products in a manner where:

- a. the use would not expose the surrounding area to significant noise, dust, vibrations, glare or other nuisance characteristics.
- b. wastewater generated on the property shall not be in an amount or of a type that would excessively burden municipal sewer treatment abilities or capacities.
- c. water consumed by activities on the property shall not be in an amount that would excessively burden the municipal water supply system.

3. Schools

4. Government and Civic Buildings

**C. Conditional Uses**

1. Hospitals and Clinics

2. Any commercial or industrial use with hours of operation between the hours of 10:00 pm and 7:00 am.

3. Any legitimate use provided it is of the same general character as those listed under Permitted Uses, but that do not meet the specific criteria required for a Permitted Use, and provided they are deemed fitting and compatible to the district by the City Council.

**D. Lot Requirements.**

1. The following minimum lot requirements shall apply to all lots created in the Highway Commercial/Light Industrial zone after the date this ordinance is enacted:

Lot Width	50 feet
Lot Depth	None

parcels and over 50% screening from the road or any non-residential parcel. Percentages shall be determined by amount of structure that can be seen during leaf-on conditions. A landscaping and screening plan must be submitted and approved by the Planning Commission with each conditional use permit.

- I. Lighting. Lighting shall be minimal. Lighting shall be downward directional and shall be compatible with the surrounding development. Lights approved with signs must be turned off at the close of business each day.
- J. Fire Lanes. Fire lanes shall remain unobstructed at all times.
- K. Fences. Fences not exceeding 84 inches in height may be constructed no closer than two (2) feet from the public right-of-way or as otherwise approved by conditional use permit so as to allow sufficient room for maintenance. Under no circumstances shall a fence be constructed closer than 10 feet from the surface of a public road and in all cases not within the public right-of-way. Materials shall consist of usual fencing materials with posts and fence of metal, wood, concrete, brick or smooth wire. Barbed or electrified wire is prohibited, except where specific approval has been given by the Planning Commission.

## **5.7 RURAL INDUSTRIAL**

A. Purpose. The purpose of the Rural Industrial District is to establish and preserve areas for industrial and related uses that are best located outside the core areas of the City and can be served with existing public roads. Uses in this district can be effectively serviced with private sewer and water. These areas are intended for business and industry that, by their nature and/or operation, involve the potential for nuisance characteristics that cannot be contained within a building and thus would not be compatible with land uses in the core of the City. Uses that involve significant outdoor storage, large parking lots or loading/unloading areas, or other nuisance characteristics that are difficult to control are intended for this area provided that their operation is not of a nature incompatible with current or anticipated surrounding land uses.

### **B. Permitted Uses**

1. Manufacturing, Wholesaling, bulk storage plants.
2. Warehousing and other indoor storage facilities.
3. Sales of large equipment or machinery involving outdoor display or storage.

### **C. Conditional Uses**

1. Concrete, bituminous storage/recycling facilities
2. Gravel or other mining
3. Hot mix plant
4. Ready mix plant
5. Salvage yard
6. Solid waste processing or transfer
7. Recycling facilities
8. Industrial or similar uses which may generate significant and regular nuisance characteristics

9. Industrial or similar uses which may generate significant and regular heavy truck or heavy rail traffic

10. Any legitimate use provided it is of the same general character as those listed under Permitted Uses and provided they are deemed fitting and compatible to the district by the City Council.

D. Lot and Building Requirements

1. Minimum Lot Width/Depth: None, provided that each parcel has direct or easement access to a public street of at least 20 feet in width.
2. The following setback and other requirements shall apply to the construction or placement of structures or buildings on a property, except as specifically authorized otherwise by this Ordinance:

Setback, right-of-way, public streets	30 feet
Setback, alley – minimum	30 feet (primary building) 10 feet (accessory building)
Setback, right-of-way, County Road 82 – minimum	30 feet
Setback, side - feet, minimum	10 feet
Setback, rear – minimum	10 feet
Building height - feet, maximum	25

E. Impervious Coverage. Impervious coverage shall be limited to 50%, except that it may be increased to 75% if the following is provided and approved by the City:

1. A storm water retention plan showing containment of the 10-year, 24-hour storm event on the parcel.
2. Direct runoff of stormwater to adjacent properties and wetlands shall be eliminated through the use of berms, infiltration ponds, swales, filtration strips or other permanent means.

## 5.8 OS OPEN SPACE/AGRICULTURAL DEVELOPMENT

A. Purpose. The purpose of the Open Space/Agricultural Development district is to allow for future planning of all lands in the City of Garfield not classified, or lands hereafter annexed shall become an Open Space/Agricultural Development District, and shall remain so until rezoned by the Council.

B. Permitted Uses

1. Single-unit detached dwellings (one per lot)
2. Public Parks, Playgrounds
3. Residential accessory buildings, including private garages, carports, detached gazebos and screen rooms, and storage buildings consistent with the performance standards of this section

<b>ACCESSORY USES</b>	Accessory uses, buildings and structures customarily incidental and directly related to the uses allowed as permitted, interim or conditional uses are permitted in all districts.
-----------------------	--

<b>AGRICULTURAL USES</b>	<b>RCR</b>	<b>RR</b>	<b>UR</b>	<b>RS</b>	<b>CS</b>	<b>C-U</b>	<b>C-R</b>	<b>I</b>
Agricultural; limited, however, to plant husbandry and sale of plants and produce.	A	A	A	A	A	A	A	A
Limited livestock raising of 0.5 animal units <u>per acre</u> up to 49 a.u. (pasture)	A	A	IU	IU	IU	IU	IU	IU
Limited livestock raising of more than 0.5 animal units <u>per acre</u> (pasture)	IU	IU	IU	IU	IU	IU	IU	IU
Animal Feedlot	X	X	X	X	X	X	X	X
Other uses of the same general character as those listed above, provided they are deemed fitting or compatible to the district by the Planning Commission	IU	IU	IU	IU	IU	IU	IU	IU

Key: A = Allowed, no permit required; P = A use allowed, but which may require a land use permit; CU = A use requiring a Conditional Use Permit; IU = A use requiring an Interim Use Permit; X = not permitted.

<b>RESIDENTIAL USES</b>	<b>RCR</b>	<b>RR</b>	<b>UR</b>	<b>RS</b>	<b>CS</b>	<b>C-U</b>	<b>C-R</b>	<b>I</b>
Dwelling								
Single Family	P	P	P	P	CU	CU	CU	CU
Second single family on a parcel (permanent)	X	X	X	X	X	X	X	X
Second single family on a parcel (temporary) <sup>6</sup>	IU	IU	IU	IU	IU	IU	IU	IU
Multi-Family (2 units)	X	X	CU	X	X	CU	CU	CU
Multi-Family (3-4 units)	X	X	CU	X	X	CU	CU	CU
Multi-Family (5+ units)	X	X	CU	X	X	CU	CU	CU
For security persons and their families located on the premises where they are employed	X	X	X	X	X	IU	IU	IU
Guest Cottage (riparian lots only)	X	X	X	CU	CU	X	X	X
Travel Trailers/ Campers/ Recreational Vehicles (1 per lot)	A	A	A	A	A	X	X	X
Keeping of Animals (as per Section V.V of this ordinance) <sup>7</sup>	A	IU	IU	IU	IU	A	A	A

<sup>6</sup> Added 8/4/2014 (Resolution #14-02)

<sup>7</sup> Added 5/21/2012 (Resolution #12-05)

Home Occupations, Low Activity <sup>8</sup>	P	P	P	P	P	X	X	X
Home Occupations, Moderate Activity <sup>8</sup>	IU	IU	IU	IU	IU	X	X	X
Home Occupations, High Activity <sup>8</sup>	IU	IU	X	X	IU	X	X	X
Controlled Access Lot	X	X	X	CU (X in RS- NES distric t)	CU (X in RS- NES distric t)	X	X	X
Bed and Breakfast Facilities	CU	CU	CU	CU	CU	X	X	X
Planned Unit Developments – Residential (RS District) <sup>9</sup>	X	X	X	CU	CU	X	X	X
Planned Unit Development – Single-Family <sup>10</sup>	X	X	CU	X	X	X	X	X
Planned Unit Development – Multi-Family <sup>11</sup>	X	X	CU	X	X	CU	X	CU
Rural Reserve Development	CU	CU	X	X	X	X	X	X
Other uses of the same general character as those listed above, provided they are deemed fitting or compatible to the district by the Planning Commission	IU	IU	IU	IU	IU	IU	IU	IU

Key: A = Allowed, no permit required; P = A use allowed, but which may require a land use permit; CU = A use requiring a Conditional Use Permit; IU = A use requiring an Interim Use Permit; X = not permitted.

<b>COMMERCIAL USES</b>	<b>RCR</b>	<b>RR</b>	<b>UR</b>	<b>RS</b>	<b>CS</b>	<b>C-U</b>	<b>C-R</b>	<b>I</b>
Adult Uses	X	X	X	X	X	X	X	CU
Auto Repair	IU	X	X	X	X	CU	CU	CU
Automobile accessory store with no outdoor storage	X	X	X	X	X	P	P	P
Billboard sign	X	X	X	X	X	CU	CU	CU
Bowling alley	X	X	X	X	X	CU	X	CU
Cabinet Shop	IU	X	X	X	X	CU	CU	P
Commercial uses which serve local permanent residents and the resort industry, such as grocery stores, marine supplies, equipment and service; recreational equipment sales and privately owned and licensed recreational activity.	IU	IU	IU	IU	IU	CU	CU	CU

<sup>8</sup> Amended 3/21/2011 (Resolution #11-02)

<sup>9</sup> Amended 5/21/2007 (Resolution #07-06)

<sup>10</sup> Amended 5/21/2007 (Resolution #07-06)

<sup>11</sup> Amended 5/21/2007 (Resolution #07-06)

Communications services and utility towers including wind towers, cellular phone towers and other wireless telecommunications towers.	CU							
Contractors offices, shops and yards without outdoor storage	IU	X	X	X	X	P	P	P
Contractors offices, shops and yards with outdoor storage	IU	X	X	X	X	CU	CU	CU
Gas and convenience store	X	X	X	X	CU	CU	CU	CU
Health/fitness center, racquetball club and roller rinks	X	X	X	X	X	CU	X	CU
Hospitals, nursing homes	X	X	X	X	X	CU	X	CU
Financial institutions	X	X	X	X	X	P	P	P
Laundromat/Dry cleaning	X	X	X	X	X	CU	X	CU
Machinery, equipment sales, storage and service	X	X	X	X	X	CU	CU	CU
Mini-Storage	X	X	X	X	X	P	P	P
Motel/Hotel and/or convention centers	X	X	X	X	CU	CU	X	CU
Nurseries/garden store	IU	IU	X	X	X	P	P	P
Offices of members of recognized professions, such as doctors of medicine, optometry, dentistry and chiropractors; engineers, lawyers and architects. (In RR, R, RS and CS districts, provided such professions are carried on in their respective residents)	CU	CU	CU	CU	CU	P	CU	P
Retail sales and/or service, with no outdoor storage	X	X	X	CU	CU	P	CU	CU
Retail sales and/or service, with outdoor storage	X	X	X	CU	CU	CU	CU	CU
Restaurant, on/off sale liquor sales; supper club and fast food establishments	X	X	X	CU	CU	CU	X	CU
Planned Unit Development – Commercial (RS/CS District) <sup>12</sup>	X	X	X	X	CU	X	X	X
Planned Unit Development – Non-Residential <sup>13</sup>	X	X	CU	X	X	CU	CU	CU
Veterinary Clinic	IU	X	X	X	X	CU	CU	CU
Other uses of the same general character as those listed above, provided they are deemed fitting or compatible to the district by the Planning Commission	IU							

<sup>12</sup> Amended 5/21/2007 (Resolution #07-06)

<sup>13</sup> Amended 5/21/2007 (Resolution #07-06)

Key: A = Allowed, no permit required; P = A use allowed, but which may require a land use permit; CU = A use requiring a Conditional Use Permit; IU = A use requiring an Interim Use Permit; X = not permitted.

<b>INDUSTRIAL USES</b>	<b>RCR</b>	<b>RR</b>	<b>UR</b>	<b>RS</b>	<b>CS</b>	<b>C-U</b>	<b>C-R</b>	<b>I</b>
Temporary concrete/bituminous storage or recycling facilities related to a specific project lasting less than 12 months. <sup>14</sup>	IU	IU	X	X	X	CU	CU	CU
Permanent concrete/bituminous storage or recycling facilities. <sup>15</sup>	X	X	X	X	X	CU	CU	CU
Heavy manufacturing and assembly	X	X	X	X	X	X	X	CU
Light manufacturing of parts and assembly	X	X	X	X	X	P	CU	CU
Mining/Extraction of gravel or other materials	IU	IU	IU	IU	IU	CU	CU	CU
Hot mix plant, Temporary	IU	IU	X	X	X	IU	IU	IU
Hot mix plant, Non-temporary	X	X	X	X	X	CU	CU	CU
Ready mix plant	X	X	X	X	X	CU	CU	CU
Transportation or freight terminal	X	X	X	X	X	CU	CU	P
Warehouse	X	X	X	X	X	CU	CU	P
Wholesale business	X	X	X	X	X	CU	CU	P
Salvage Yard	X	X	X	X	X	X	X	CU
Recycling facilities (including processing and transferring) <sup>16</sup>	X	X	X	X	X	X	X	CU
Other uses of the same general character as those listed above, provided they are deemed fitting or compatible to the district by the Planning Commission	IU	IU	IU	IU	IU	IU	IU	IU

Key: A = Allowed, no permit required; P = A use allowed, but which may require a land use permit; CU = A use requiring a Conditional Use Permit; IU = A use requiring an Interim Use Permit; X = not permitted.

<sup>14</sup> Amended 12/15/08 (Resolution #08-16)

<sup>15</sup> Added 12/15/08 (Resolution #08-16)

<sup>16</sup> Added 12/15/08 (Resolution #08-16)

## STAFF REPORT

---

**Issue:** Massage Business/Therapist Licensing

**Agenda Item:** 8(b)

---

**Background Information:**

- **Issue:** Currently, the State of Minnesota nor Morrison County regulates massage therapists or businesses. Many cities do have licensing requirements, although Motley does not.

Staff is providing several examples of other cities' ordinances in Minnesota that require a massage therapist and/or a massage business to be licensed. You will see that each ordinance provided in this report has slightly different requirements.

Staff is providing these examples so that the Commission can discuss whether it would like to adopt such an ordinance and what types of regulations it would want included. Depending on the outcome of the meeting, Staff could come back with a draft ordinance for further, more detailed discussion.

---

**Staff Comments:** The general purpose of a massage licensing ordinance is essentially to prevent massage businesses serving as a front for prostitution or other illegal activities, as well as to ensure the health and safety of massage patrons and prevent the spread of communicable disease.

Most cities that regulate such persons or businesses have requirements for an annual license, appropriate fees to cover the cost of the licensing program, background checks, minimum levels of education and/or experience and other such regulations as their starting point. Others go further by regulating the layout and design of interior aspects of the building or how the exterior aspects of the building are designed. Hours of operation have also been regulated.

A bill was introduced during the 2013-2014 Legislative Session that would set up a voluntary process for registering as a massage therapist and going through steps to achieve that status. It does not appear that it would be mandatory. A bill has been reintroduced (H.F. 644) for the 2015-2016 legislative session along these same lines. The proposed legislation specifically notes that it does not prevent a City from continuing or adopting its own licensing requirements.

**CITY OF MAPLE PLAIN  
COUNTY OF HENNEPIN**

**STATE OF MINNESOTA**

**ORDINANCE NO. 280**

**TITLE XI: CHAPTER 114**

**PURPOSE**

The purpose of this article of the City Code is to prohibit massage businesses and services to the public except those licensed by the city as therapeutic massage enterprises and massage therapists pursuant to this section. The licensing regulations prescribed herein are necessary in order to protect businesses that are operating legitimate enterprises, to prevent criminal activity, and to protect the health and welfare of the community. The purpose of this section is not to impose restrictions or limitations on the freedom of protected speech or expression.

**FINDINGS**

The City Council of the City of Maple Plain makes the following findings regarding the need to license therapeutic massage enterprises and therapists and to prohibit all other types of massage businesses and services to the public:

- (1) Persons who have bona fide and standardized training in therapeutic massage, health, and hygiene can provide a legitimate and necessary service to the general public.
- (2) Health and sanitation regulations governing therapeutic massage enterprises and therapists can minimize the risk of the spread of communicable diseases and can promote overall health and sanitation.
- (3) License qualifications for the restrictions on therapeutic massage enterprises and therapists can minimize the risk that such businesses and persons will facilitate prostitution and other criminal activity in the community.
- (4) Massage services provided by persons with no specialized and standardized training in massage can endanger citizens by facilitating the spread of communicable diseases, by exposing citizens to unhealthy and unsanitary conditions, and by increasing the risk of personal injury.
- (5) Massage businesses which employ persons with no specialized and standardized training can tax city law enforcement services because such

businesses are more likely to be operated as fronts for prostitution and other criminal activity than operations established by persons with standardized training.

- (6) The training of professional massage therapists at accredited institutions is an important means of ensuring the fullest measure of protecting the public health, safety, and welfare.

## DEFINITIONS

The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise:

**ACCREDITED INSTITUTION** means an educational institution holding accredited status with the United States Department of Education.

**ACCREDITED PROGRAM** means a professional massage program accredited by the Commission on Massage Therapy Accreditation (COMTA).

**BUSINESS LICENSEE** means the individual who has obtained a valid therapeutic massage enterprise license from the city, on behalf of himself or herself or on behalf of a business entity, and is designated to be responsible for the enterprise's compliance with all aspects of this section.

**CLEAN** means the absence of dirt, grease, rubbish, garbage, and other offensive, unsightly, or extraneous matter.

**GOOD REPAIR** means free of corrosion, breaks, cracks, chips, pitting, excessive wear and tear, leaks, obstructions, and similar defects so as to constitute a good and sound condition.

**ISSUING AUTHORITY** means the City of Maple Plain.

**MASSAGE** means any method of pressure on, or friction against, or the rubbing, stroking, kneading, tapping, pounding, vibrating, stimulating, or rolling of the external parts of the human body with the hands or arms with the aid of any mechanical or electrical apparatus, or other appliances or devices, with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment, or other similar preparations.

**MASSAGE THERAPIST** means an individual who practices or administers massage to the public who can demonstrate to the issuing authority that he or she:

- (1) Has current insurance coverage of \$1,000,000.00 for professional liability in the practice of massage;

- (2) Is affiliated with, employed by, or owns a therapeutic massage enterprise licensed by the city; and
- (3) Has completed 500 hours of certified therapeutic massage training with content that includes the subjects of anatomy, physiology, hygiene, ethics, massage theory and research, and massage practice from an accredited program or accredited institution that has been approved by the issuing authority. These training hours must be authenticated by a single provider through a certified copy of the transcript of academic record from the school issuing the training, degree or diploma.

**OPERATE** means to own, manage, or conduct, or to have control, charge, or custody over.

**PERSON** means any individual, firm, association, partnership, corporation, joint venture, or combination of individuals.

**THERAPEUTIC MASSAGE ENTERPRISE** means an entity which operates a business which hires only licensed therapeutic massage therapists to provide therapeutic massage to the public. The owner/operator of a therapeutic massage enterprise need not be licensed as a therapeutic massage therapist if he or she does not at any time practice or administer massage to the public. A therapeutic massage enterprise may employ other individuals such as cosmetologists and estheticians, and these individuals are not required to have a massage therapist license as long as they are not providing therapeutic massage to the public.

**WITHIN THE CITY** means physical presence as well as telephone referrals such as phone-a-massage operations in which the business premises, although not physically located within the city, serves as a point of assignment of employees who respond to requests for services from within the city.

## **LICENSE REQUIRED**

- (a) **Therapeutic massage enterprise license.** It shall be unlawful for any person or entity to own, operate, engage in, or carry on, within the city, any type of massage services to the public for consideration without first having obtained a therapeutic massage enterprise license from the city pursuant to this section.
- (b) **Massage therapist license.** It shall be unlawful for any individual to practice, administer, or provide massage services to the public for consideration within the city without first having obtained a massage therapist license from the city pursuant to this section.

## **EXCEPTIONS**

A therapeutic massage enterprise or therapist license is not required for the following persons and places:

- (1) Persons duly licensed by this state to practice medicine, surgery, osteopathy, chiropractic, physical therapy, or podiatry, provided the massage is administered in the regular course of the medical business and not provided as part of a separate and distinct massage business.
- (2) Persons duly licensed by this state as beauty culturists or barbers, provided such persons do not hold themselves out as giving massage treatments and provided the massage by beauty culturists is limited to the head, hand, neck, and feet and the massage by barbers is limited to the head and neck.
- (3) Places licensed by this state as a “Salon” pursuant to Minnesota State Statute 155A.29, provided such places do not hold themselves out as offering massage treatments and provided the massage by salon employees is limited to the head, hand, neck, and feet.
- (3) Persons working solely under the direction and control of a person duly licensed by this state to practice medicine, surgery, osteopathy, chiropractic, physical therapy, or podiatry.
- (4) Places duly licensed or operating as a hospital, nursing home, hospice, sanitarium, or group home established for the hospitalization or care of human beings.
- (5) Students of an accredited institution who are performing massage services in the course of a clinical component of an accredited program of study, provided that the students are performing the massage services at the location of the accredited institution and provided the students are identified to the public as students of massage therapy. Students of an accredited institution who are performing massage services at clinics or other facilities located outside of the accredited institution must have at least 150 hours of certified therapeutic massage training at the accredited institution prior to performing the therapy outside of the institution, must have proof of liability insurance, and must be identified to the public as a student of massage therapy.

---

## LICENSE APPLICATION

- (a) ***Therapeutic massage enterprise license application.*** An application for a therapeutic massage enterprise license shall be made on a form supplied by the city clerk and shall request the following information:
  - (1) ***All applicants.*** For all applicants:
    - a. Whether the applicant is an individual, corporation, partnership, or other form of organization.

- b. The legal description of the premises to be licensed together with a plan of the area showing dimensions, location of buildings, street access, and parking facilities.
- c. The floor number, street number, and rooms where the massage services are to be conducted.
- d. Whether all real estate and personal property taxes that are due and payable for the premises to be licensed have been paid, and if not paid, the years and amounts that are unpaid.
- e. Whenever the application is for premises either planned or under construction or undergoing substantial alteration, the application shall be accompanied by a set of preliminary plans showing the design of the proposed premises to be licensed. If the plans for design are on file with the city's building and inspection department, no plans need be submitted to the issuing authority.
- f. The name and street address of the business if it is to be conducted under a designation, name, or style other than the name of the applicant, and a certified copy of the certificate as required by Minn. Stat. § 333.02.
- g. The amount of the investment that the applicant has in the business, buildings, premises, fixtures, furniture, and equipment, and proof of the source of such investment. The identity of all other persons investing in the business, building, premises, fixture, furniture and equipment, the amount of their investment and proof of the source of such investment.
- h. All applications for licenses, whether enterprise or individual applications, shall be signed and sworn to. If the application is that of a natural person, it shall be signed and sworn to by such person; if by a corporation, by an officer thereof; if by an incorporated association, by the manager or officer thereof; if by a limited liability company (LLC), by a member thereof. Any falsification of information on the license application shall result in the denial of the license.
- i. The full name, place and date of birth, and street residence address of the designated business licensee along with a color photocopy of the applicant's MN driver's license or MN I.D. front and back, or any other government-issued I.D. If the photocopy is not acceptable to the Director of the West Hennepin Public Safety Department, the department may take photographs for the file.
- j. All applicants shall agree, in writing, to submit to a criminal background check.

k. Such other information as the City Council or issuing authority shall require.

(2) **Individuals.** For applicants who are individuals:

- a. The full name, place and date of birth, and street residence address of the applicant, who shall also be the designated business licensee, along with a copy of a valid identification card, as required under (a)(1)(i).
- b. Whether the applicant has ever used or been known by a name other than the applicant's name, and if so, the name or names and information concerning dates and places where used.
- c. Whether the applicant is a citizen of the United States or a resident alien or has the legal authority to work in the United States.
- d. Street addresses at which the applicant has lived during the preceding five years.
- e. The type, name, and location of every business or occupation the applicant has been engaged in during the preceding five years.
- f. Whether the applicant is currently licensed in other communities to perform massage therapy, and if so, where.
- g. Names and addresses of the applicant's employers for the preceding five years.
- h. Whether the applicant has ever been convicted of any felony, crime, or violation of any ordinance other than a minor traffic offense. If so, the applicant shall furnish information as to the time, place and offense for which convictions were had.
- i. 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 revoked or suspended within the last five years of the date the license application is submitted to the issuing authority.
- j. Whether the applicant has ever been engaged in the operation of massage services. If so, applicant shall furnish information as to the name, place and length of time of the involvement in such an establishment.

(3) **Partnerships.** For the applicants that are partnerships: the names and addresses of all general and limited partners and all information concerning each general partner as is required in paragraph (2) of this section of this Code. The managing partners shall be designated and the interest of each general and limited partner in the business shall be disclosed. A true copy of the partnership agreement shall be submitted with the application, and if the partnership is required to file a certificate as to a trade name under Minn. Stat. § 333.02, a certified copy of such

certificate shall be submitted. The license shall be issued in the name of the partnership.

- (4) ***Corporations and other organizations.*** For applicants that are corporations or other types of organizations:
- a. The name of the organization, and if incorporated, the state of incorporation.
  - b. A true copy of the certificate of incorporation, and, if a foreign corporation, a certificate of authority as described in Minn. Stat. § 303.02.
  - c. The name of the general manager, corporate officers, proprietor, and other person in charge of the premises to be licensed, and all the information about said persons as is required in paragraph (2) of this section of this Code.
  - d. A list of all persons who own or control an interest in the corporation or organization or who are officers of said corporation or organization, together with their addresses and all the information regarding such persons as is required in paragraph (2) of this section of this Code.

- (b) ***Massage therapist license application.*** An application for a massage therapist license shall be made on a form supplied by the City Clerk and shall request the following information:
- (1) The applicant's name and current address.
  - (2) The applicant's current employer.
  - (3) The applicant's employers for the previous five years, including the employer's name, address and dates of employment.
  - (4) The applicant's addresses for the previous five years.
  - (5) The applicant's date of birth, home telephone number, weight, height, color of eyes, and color of hair. A color photocopy of the applicant's MN driver's license or MN I.D. front and back, or any other government-issued I.D. If the photocopy is not acceptable to the Director of the West Hennepin Public Safety Department, the department may take photographs for the file.
  - (6) Whether the applicant has ever been convicted of any felony, crime, or violation of any ordinance other than a minor traffic offense and, if so, the time, place, and offense for which convictions were had.
  - (7) 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 revoked or suspended within the last five years of the date the license application is submitted to the issuing authority.
  - (8) The names, resident and business addresses of those residents of the metropolitan area, of good moral character, not related to the applicant or

financially interested in the premises of the business, who may be referred to as the applicant's character.

- (9) Whether the applicant is a U.S. citizen or resident alien or has the legal authority to work in the United States.
- (10) Whether the applicant has ever used or been known by a name other than the applicant's name, and if so, the name or names and information concerning dates and places where used.
- (11) Whether the applicant has met the definition of a massage therapist as defined.
- (12) All applicants shall agree, in writing, to submit to a criminal background check.
- (13) Such other information as the City Council or issuing authority shall require.

## **LICENSE FEES**

The fees for a therapeutic massage enterprise and therapist licenses shall be as set forth in the City's Fee Schedule. An investigation fee shall be charged for therapeutic massage enterprise licenses and an individual therapeutic massage license. Each application for a license shall be accompanied by payment in full of the required license and investigation fees. No investigation fee shall be refunded.

Beginning in 2014, the first year of massage therapy licensing, license fees for new enterprises and individuals shall be pro-rated to one-half the annual fee. Licenses approved for 2014 will be effective July 1 through December 31, 2014. Thereafter the full license fee will be charged on an annual basis regardless of when the application is received. Background investigation fees will not be pro-rated for a new application.

## **LICENSE APPLICATION VERIFICATION AND CONSIDERATION**

### **(a) *Verification of information in therapeutic massage enterprise license and massage therapist license.***

- (1) All applications shall be referred to the Director of the West Hennepin Public Safety Department, or his or her designee, and such other city departments as the city administrator shall deem necessary for verification and investigation of the facts set forth in the application. The Director, or his or her designee, is empowered to conduct any and all investigations to verify the information on the application, including ordering a computerized criminal history inquiry and/or a driver's license history inquiry on the applicant. The Director, or his or her designee, is authorized to access data maintained in the Minnesota Bureau of Criminal Apprehensions Computerized Criminal History information system in accordance with BCA policy.

### **(b) *Consideration of application.***

- (1) Within a reasonable period after receipt and verification of a complete therapeutic massage enterprise license application or a massage therapist license application and receipt of the applicable fees, the Director, or his or her designee, and other consultants shall make a written recommendation to the City Council as to the issuance or non-issuance of the license. The City Council may order and conduct such additional investigation as it deems necessary. Upon completion of its investigation, the council shall grant or deny the license. Notice shall be sent by the City Clerk by regular mail to the applicant upon a denial informing the applicant of the right to appeal to the City Council within 20 days. If an appeal is properly made, the matter shall be placed on the next available City Council agenda.
- (2) **Photo I.D. cards.** Photo identification cards shall be issued to individuals receiving a therapeutic massage enterprise license and to those receiving a massage therapist license.

**PERSONS INELIGIBLE FOR LICENSE**

- (a) **Therapeutic massage enterprise license.** No therapeutic massage enterprise license shall be issued to an individual or entity operated by an individual who:
  - (1) Is not 18 years of age or older at the time the application is submitted to the issuing authority;
  - (2) Has been convicted of any crime directly related to the occupation licensed as prescribed by Minn. Stat. § 364.03, subd. 2, and who has not shown competent evidence of sufficient rehabilitation and present fitness to perform the duties and responsibilities of a licensee as prescribed by Minn. Stat. § 364.03, subd. 3;
  - (3) 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 revoked or suspended within the last five years of the date the license application is submitted to the issuing authority;
  - (4) Is not a citizen of the United States or a resident alien, or is legally prohibited from working in the United States;
  - (5) Is not of good moral character or repute;
  - (6) Is not the real party in interest of the enterprise;
  - (7) Has knowingly misrepresented or falsified information on the license application;
  - (8) Cannot meet the definition of therapeutic massage enterprise as defined by the City of Maple Plain. ;
  - (9) Owes taxes or assessments to the state, county, school district, or city that are due and delinquent; or

- (10) Is the spouse of a person whose massage-related license has been suspended or revoked in the past five years.
- (b) **Massage therapist license.** No massage therapist license shall be issued to a person who:
  - (1) Is not 18 years of age or older at the time the application is submitted to the issuing authority;
  - (2) Has been convicted of any crime directly related to the occupation licensed as prescribed by Minn. Stat. § 364.03, subd. 2, and who has not shown competent evidence of sufficient rehabilitation and present fitness to perform the duties and responsibilities of a licensee as prescribed by Minn. Stat. § 364.03, subd. 3;
  - (3) Whether the applicant has had an interest in, individually or as part of a corporation, partnership, association, enterprise, business or firm, a massage license that was revoked or suspended within the last five years of the date the license application is submitted to the issuing authority;
  - (4) Is not a citizen of the United States or a resident alien, or is legally prohibited from working in the United States;
  - (5) Is not of good moral character or repute;
  - (6) Has knowingly misrepresented or falsified information on the license application;
  - (7) Is not affiliated with, employed by, or does not own a therapeutic massage enterprise licensed by the city; or
  - (8) Cannot meet the definition of massage therapist as defined.

**LOCATIONS INELIGIBLE FOR THERAPEUTIC MASSAGE ENTERPRISE LICENSE**

- (a) **Delinquent taxes.** No therapeutic massage enterprise shall be licensed if such enterprise is located on property on which taxes, assessments, or other financial claims to the state, county, school district, or city are due and delinquent. In the event a suit has been commenced under Minn. Stat. §§ 278.01—278.13, questioning the amount or validity of taxes, the City Council may, on application, waive strict compliance with this provision; no waiver may be granted, however, for taxes or any portion thereof, which remain unpaid for a period exceeding one year after becoming due.
- (b) **Improper zoning.** No therapeutic massage enterprise shall be licensed if the location of such enterprise is not in conformance with the city's zoning code.

**LICENSE RESTRICTIONS**

- (a) **Posting and production of license.** A therapeutic massage enterprise license issued must be posted in a conspicuous place on the premises for which it is used. Upon the demand of the City Administrator or a licensed peace officer, a therapeutic massage enterprise must also immediately produce a current and

complete list of all licensed massage therapists who are employed by the therapeutic massage enterprise. A person licensed as a massage therapist shall also post his or her massage therapist license, with color photo, in a conspicuous place on the premises at which the therapist is associated. A massage therapist shall produce his or her massage therapist license upon demand by the City Administrator or a licensed peace officer.

- (b) ***Licensed premises.*** A therapeutic massage enterprise license is only effective for the compact and contiguous space specified in the approved license application. If the licensed premises is enlarged, altered, or extended, the licensee shall inform the City Clerk within ten business days. It shall be the continuing duty of each licensee to properly notify the City Clerk, within ten business days, of any change in the information or facts required to be furnished on the application for license and failure to comply with this section shall constitute cause for revocation or suspension of such license.
- (c) ***Transfer of license prohibited.*** The license issued is for the person or the premises named on the approved license application. No transfer of a license shall be permitted from place to place or from person to person without complying with the requirements of an original application.
- (d) ***Affiliation with enterprise required.*** A massage therapist shall be employed by, affiliated with, or own a massage enterprise business licensed by the city, unless a person or place is specifically exempted from obtaining a therapeutic massage enterprise license as defined.
- (e) ***Employment of unlicensed massage therapists prohibited.*** No therapeutic massage enterprise shall employ or use any person to perform massage who is not licensed as a therapeutic massage therapist under this section, unless the person is specifically exempted from obtaining a therapist license as defined .
- (f) ***Coverage of genitals during massage.*** The licensee shall require that the person who is receiving the massage shall at all times have his or her genitals covered with non-transparent material or clothing.
- (g) ***Therapist dress/uniform requirements.*** Any massage therapist performing massage shall at all times be dressed professionally, shall have his or her breasts, buttocks, anus, and genitals covered with non-transparent material or clothing.
- (h) ***Effect of license suspension or revocation.*** No licensee shall solicit business or offer to perform massage services while under license suspension or revocation by the city.
- (i) ***Massage of certain body parts prohibited.*** At no time shall the massage therapist intentionally massage or offer to massage the penis, scrotum, anus, mons veneris, vulva, or vaginal area of a person.
- (j) ***Restrictions regarding hours of operation.*** No therapeutic massage enterprise shall be open for business, nor will any therapeutic massage therapist offer massage services, before 8:00 a.m. or after 10:00 p.m. any day of the week. No

customers or patrons shall be allowed to remain upon the licensed premises after 10:30 p.m. and before 8:00 a.m. daily. Support activities such as cleaning, maintenance and bookkeeping are allowed outside of business hours.

- (k) ***Restrictions regarding use of the business premises outside of business hours.*** No licensee shall permit any person to occupy the business premises outside of business hours, unless it is to complete the support activities outlined in (j). No licensee shall permit any person to reside at the business premises.
- (l) ***Proof of local residency required.*** In the case of a therapeutic massage enterprise, the licensee, operator, managing partner, or manager of the licensed premise must show proof of residency in one of the following counties: Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington and Wright in Minnesota, and St. Croix or Pierce in Wisconsin. In the case of therapeutic massage therapists, the licensee must show proof of residing in one of the following counties: Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington and Wright in Minnesota, and St. Croix or Pierce in Wisconsin.
- (m) ***Inspections.*** In light of the high risk of involvement with illegal conduct an establishment providing massage therapy poses to the general public and in the interests of public safety, the issuing authority, environmental health department or designee, and/or the West Hennepin Public Safety Department shall have the right to enter, inspect, and search the licensed premises during the hours in which the licensed premises is open for business to ensure compliance with all provisions of this section and any other applicable sections of the city code and state building code. Any searches of the licensed premises are subject to reasonableness standards as recognized by the courts; search warrants will be secured when applicable. Any entry into a private residence will require either consent, exigent circumstances, or a search warrant. With reasonable notice, the business records of the licensee, including income tax returns, shall be available for inspection during the hours in which the licensed premises is open for business. The licensee is subject to a \$250.00 fee for a third inspection, if orders to correct are issued to the licensee and those orders are not corrected upon re-inspection. Licenses shall be granted only to establishments which can meet the safety and sanitary requirements of the city and of the building code regulations of the city and state.
- (n) ***Posting of rates.*** All massage enterprise businesses must post their rates for service in a prominent place in the entrance or lobby of the business.
- (o) ***Illegal activities.*** In addition to the license restrictions set forth in this section, any advertising by a licensee of any potential unlawful or erotic conduct at the licensed establishment shall be prohibited. A licensee under this chapter shall be strictly responsible for the conduct of the business being operated in compliance

with all applicable laws and ordinances, including the actions of any employee or agent of the licensee on the licensed premises.

- (p) ***Restrictions involving minors.*** No person under the age of 18 shall be permitted at any time to be in or on the licensed premises as a customer, guest, or employee, unless accompanied by his/her parent or guardian.

#### **RESTRICTIONS REGARDING SANITATION, HEALTH, AND SAFETY**

- (a) ***Toilet room requirements.*** A licensed therapeutic massage enterprise shall be equipped with adequate and conveniently located toilet rooms for the accommodation of its employees and patrons. The toilet room shall be well ventilated by natural or mechanical methods and be enclosed with a door. The toilet room shall be kept clean and in good repair and shall be adequately lighted.
- (b) ***Paper/linen requirements.*** A licensed therapeutic massage enterprise shall provide single-service disposal paper or clean linens to cover the table, chair, furniture, or area on which the patron receives the massage; or in the alternative, if the table, chair, or furniture on which the patron receives the massage is made of material impervious to moisture, such table, chair, or furniture shall be properly sanitized after each massage.
- (c) ***Washing of hands required.*** The massage therapist shall wash his or her hands and arms with water and soap, anti-bacterial scrubs, alcohol, or other disinfectants prior to and following each massage service performed.
- (d) ***Door latches and locks.*** Doors on massage therapy rooms shall not be locked or capable of being locked. Locks, latches or other devices intended to secure a door so as to prevent it from being opened by any person from either side of the door with or without a key cannot be present on any doors of rooms intended for massage therapy.

#### **TERM, RENEWAL OF LICENSE**

- (a) The term of a massage therapist license and a therapeutic massage enterprise license is one year. If an individual or enterprise submits an application any time during a calendar year, the term shall expire December 31 of the year of issuance. The license fee for a partial calendar year may be pro-rated to one-half of the annual fee if an application is filed with the issuing authority after June 30.
- (b) Licenses must be renewed annually. A massage therapist license issued under this section shall expire on December 31 of the year of issuance of the license. A therapeutic massage enterprise license issued under this section shall expire on December 31 of the year of issuance. An application for the renewal of an existing license shall be made at least 75 days prior to the expiration date of the license and shall be made in such form as the issuing authority requires.
- (c) An application for a renewal of an enterprise or individual license shall be made in the same manner as the original application. The license and investigation fees

for a renewal shall be the same as those contained in the City's Fee Schedule. If the license holder is a corporation, licenses must also be renewed within 30 days whenever more than ten percent of the corporation's stock is transferred. If the license holder is a partnership, the license must also be renewed within 30 days whenever a new partner is added to the partnership. If the license holder is an LLC, the license must be renewed within 30 days whenever a change in membership or chief manager occurs.

- (d) After the completion of the renewal license verification process, the issuing authority shall present the license application to the City Council in accordance with this section. If the application is denied, the City Clerk shall notify the applicant of the determination in writing and by regular mail to the address provided on the application form. The notice shall inform the applicant of the right, within 20 days after receipt of the notice by the applicant, to request an appeal of the denial to the City Council. If an appeal to the City Council is timely received by the City Clerk, the hearing before the City Council shall take place within a reasonable period of receipt of the appeal by the issuing authority.

#### **SANCTIONS FOR LICENSE VIOLATIONS**

- (a) ***Suspension or revocation.*** The City Council may impose an administrative penalty, suspend or revoke a license issued pursuant to this section, at its discretion, for:
- (1) A violation related to fraud, misrepresentation, or false statement contained in a license application or a renewal application.
  - (2) A violation related to fraud, misrepresentation, or false statement made in the course of carrying on the licensed occupation or business.
  - (3) Any violation of this section or state law.
  - (4) A violation by any licensee or individual that is directly related to the occupation or business licensed as defined by Minn. Stat. § 364.03, subd. 2.
  - (5) Conducting the licensed business or occupation in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the community.
  - (6) If the owner, operator, manager, lessee or any of the employees are found to be in control or possession of an alcoholic beverage, a narcotic drug or controlled substance on the premises, other than drugs which may be purchased over the counter without a prescription or those for which the individual has a prescription.
  - (7) If the holder of an enterprise license fails to maintain with the issuing authority a current list of all employees of such licensed premises. The list shall include all massage therapists licensed under this section.

- (8) A material variance in the actual plan and design of the premises from the plans submitted.
- (9) Neither the charging of a criminal violation nor a criminal conviction is required in order for the council to impose an administrative penalty or suspend or revoke a license.
- (b) **Notice and hearing.** A revocation or suspension by the City Council shall be preceded by written notice to the licensee and a hearing. The notice shall give at least ten days' notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice shall be mailed by regular mail to the licensee at the most recent address listed on the license application.

\_\_\_\_\_ **THROUGH** \_\_\_\_\_ **RESERVED**

**VIOLATIONS AND PENALTIES**

Any person or entity violating the provisions of this section is guilty of a misdemeanor under Minnesota law, and shall be punished by a fine or by imprisonment, or both, together with the costs of prosecution. Each violation of this section shall constitute a separate offense. Conviction of a violation of this section, while not required, may be grounds for the suspension or revocation of any license issued under this section.

**SEVERABILITY**

If any section, subsection, sentence, clause, or phrase of this section is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this section. The City Council hereby declares that it would have adopted the section in each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

\_\_\_\_\_ **THROUGH** \_\_\_\_\_ **RESERVED**

Sec. 1. This ordinance shall take effect upon the day of publication.

Adopted this 8<sup>th</sup> day of December, 2014.

---

Jerry Young, Mayor

ATTEST:

---

Tessia Melvin, City Administrator

Section 1185 – Regulation of Massage

1185.01. Subdivision 1. Definitions. For purposes of this section, the terms defined in this section have the meanings given them.

Subd. 2. Massage Therapy or Therapeutic Massage. A scientific health care or health maintenance technique or procedure carried out by a massage therapist involving the massaging, kneading, rubbing, pressing, stroking, tapping, pounding, vibrating, or stimulating the human skin, muscles and tissues for no other purpose than physical fitness, health-care referral, healing, relaxation, or beautification.

Subd. 3. Massage Therapist. A person, other than a person licensed as a medical doctor; chiropractor; osteopath; podiatrist; licensed nurse; physical therapist; athletic director or trainer; or beautician or barber who confines his/her treatment to the scalp, face and neck; who for compensation practices and provides therapeutic massage; and who can prove completion of a minimum of 500 hours of class credits from a Recognized School in course work as required by this Section.

Subd. 4. Massage Therapy Establishment. Any establishment wherein two or more massage therapists provide massage therapy or therapeutic massage to the public, other than a hospital, sanatorium, rest home, nursing home, boarding home, medical doctor's office, chiropractor's office, or other institution licensed under the provisions of Minnesota Statutes Sections 144.50--144.69.

Subd. 5. Patron. Any person who receives a massage under such circumstances that is reasonably expected that he or she will pay money or give any consideration therefore.

Subd. 6. Recognized School. Any school or institution of learning which:

- a) has for its purpose the teaching of the theory, method, profession or work of massage therapists, which school requires a resident course of study of not less than 500 hours before the student shall be furnished a diploma or certificate of graduation from such school following successful completion of such course of study or learning.
- b) that is operating legally within the locality or province in which they are located.
- c) Schools offering a correspondence course not requiring actual attendance of class shall not be deemed a recognized school.
- d) Any school that does not, will not, or cannot provide sufficiently reliable corroboration, in the City Clerk's or designee's discretion, of a Massage Therapist's course work, attendance, or other relevant criteria shall not be considered reliable school for purposes of this Section.

1185.05 License Required. Subdivision 1. It shall be unlawful for any person to practice as a massage therapist or operate a massage therapy establishment in the City of Hopkins without first obtaining a license to do so. However, no license is required for any massage therapist working for or as an employee of a medical professional licensed under Minnesota Statutes Chapters 147 or 148.

Subd. 2. The license will be effective for one year and run from July 1 through June 30 of the license year.

Subd. 3. Exclusion. Any person who is licensed by the Minnesota Board of Medical Practices shall not be required to obtain a massage license from the City of Hopkins when said person provides proof of licensure to the City Clerk.

1185.07. License Application. Subdivision 1. Massage Therapist License. Application for a Massage Therapist license shall be made on forms provided by the City Clerk. The applicant shall provide the following information as well as any other information deemed reasonably necessary by the City Clerk:

- a) Applicant's full name (first, middle, and last)
- b) Any other name(s) the applicant has been known by
- c) Applicant's home address and telephone number
- d) Applicant's driver's license or state ID number
- c) Applicant's date of birth
- d) Applicant's address(es) for the past five years
- e) Diploma or Certificate of completion of 500 or more hours from a recognized school of Massage Therapy
- f) Proof of course work as set out in 1185.07, Subdivision 2
- g) A description of any crime or other offense, including the time, place, date and disposition, for which the applicant has been arrested.

Subd. 2. Proof of Course Work. Each applicant for a Massage Therapist license shall prove, by clear and convincing evidence, that the applicant has completed of the following minimum hours of course work in each of the following areas:

- a) 150 hours in the theory and practice of massage, including but not limited to Swedish, Esalen, Shiatsu, and/or foot reflexology techniques; and
- b) 100 hours of anatomy and physiology, including but not limited to skeletal and muscular structure and kinesiology; and
- c) 8 hours of hygiene and sanitation; and
- d) 30 hours of business practices and ethics.

Subd. 3. Massage Therapy Establishment license. Application for a Massage Therapy establishment license shall be made on forms provided by the City Clerk. The applicant shall provide the following information as well as any other information deemed reasonably necessary by the City Clerk:

- a) Applicant's full name (first, middle, and last)
- b) Any other name(s) the applicant has been known by
- c) Applicant's home address and telephone number
- d) Applicant's driver's license or state ID number
- e) Applicant's date of birth
- f) Applicant's address(es) for the past five years
- g) A description of any crime or other offense, including the time, place, date and disposition, for which the applicant has been arrested.
- h) If Applicant is a corporation, limited liability company, partnership or other entity, then the Applicant shall provide the information requested in subsections (a) – (e), above, for each officer, director, or partner of the entity.

1185.09 Provisional License. Subdivision 1. An applicant is eligible for a provisional Massage Therapist license if the applicant:

- a) proves, by clear and convincing evidence, that the applicant has completed at least 100 classroom hours of instruction in the practice of massage therapy at a Recognized School; and
- b) has practiced massage therapy for compensation for at least 2 years during the 5-year period immediately preceding the date of the application; and
- c) otherwise meets the criteria established by this Section

Subd. 2. This license may be renewed up to two times after initial application, allowing the applicant three years to meet the licensing requirements of this Section. Additional course work must be completed, as well as any other requirements which may be in effect at the time of application.

1185.11 Fees. Subdivision 1. The fees for Massage Therapy licenses and Massage Therapy Establishment licenses will be set by resolution from time to time. Each license shall be issued for a period of one year, except that if the application is made during the license year, then the license fee shall be one-fourth of the fee for each three months or part thereof for the remainder of the license year. License and investigation fees must be submitted at the time of application. (Amended Ord. 2006-963)

Subd. 2. Additional Fee. The initial application shall also include a non-refundable investigation fee to be set by resolution from time to time.

1185.13 Renewal. Applications for renewal shall be submitted at least 60 days prior to the end of the license year on forms provided by the City Clerk.

1185.15 License granted. Upon receipt of an application, the City Clerk shall forward the application to the Hopkins Police Department. The Hopkins Police Department shall report, in writing, to the City Clerk, as to any police record of the applicant (or any of applicant's officers, directors, or partners), which may reflect upon public health, safety or moral character. When all of the conditions of this ordinance have met, the City Clerk shall issue the license. If any of the conditions have not been met to the satisfaction of the City Clerk, the license shall not issue.

1085.17 Denial. No license shall be issued to an applicant who is a natural person, or to an applicant who is a corporation, limited liability company, or other business entity where any partner, officer, or director:

- a) is under 18 years of age;
- b) has been convicted of any 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 prescribed by Minnesota Statute Section 364.03, Subd. 3;
- c) is not of good moral character or repute;
- d) owes taxes, assessments, or other financial claims to any governmental agency that are due and delinquent.

1185.19 Revoking, Suspending, Denying or Not Renewing a License.

Subd. 1. The City Council may revoke, suspend, deny or decline to renew any Massage Therapist license or Massage Therapy Establishment license issued under this Section. The basis for such revocation, suspension, denial or non-renewal includes, but is not limited to, any of the following circumstances:

- a) The license was procured by misrepresentation of material facts.
- b) The applicant or one acting in his/her behalf made oral or written misstatements accompanying the application.
- c) The applicant has failed to comply with any condition set forth in any other permits granted by the City of Hopkins.
- d) The activities of the applicant or any owner/agent create or have created a danger to the public health, safety or welfare.
- e) Failure to pay any application, penalty or reinstatement fee required by this Section and City Council resolution.

- f) Violation of any regulation or provision of the code reasonably related to the licensed activity for which the license has been granted, or any other state or federal regulation or law so related.
- g) Failure of a holder of a Massage Therapy Establishment license to properly supervise an employee or independent contractor who has violated any ordinance or state or federal statute reasonably related to the licensed activity.
- h) Failure of a holder of a Massage Therapy Establishment license to properly supervise its Massage Therapists, employees or independent contractors so as to prevent prostitution or prostitution-related activities, as defined in Minnesota Statutes Section 617.80.
- i) Any violation of this Section 1185.

Subd. 2. Notification. The City Manager shall notify the applicant or holder of the license in writing of the basis for the revocation, suspension, denial or non-renewal and the date upon which the City Council shall review the request to revoke, suspend, deny, or not renew the license. The notice required by this section shall be served upon the owner or the owner's agent at least fourteen (14) days before the City Council hearing. Service shall be deemed sufficient if the notice is sent to the owner or the owner's agent by first class mail at the address provided in the license application; service of the notice shall be deemed effective as of the date of mailing.

Subd. 3. Hearing. The applicant or holder of the license (or their agent) and the City Manager or designee shall be given an opportunity to be heard and may be represented by counsel. Both sides may be permitted to examine the other side's witness(es). The Council shall hear all relevant evidence and arguments and shall review all testimony, documents, and other evidence submitted. The Council shall record the hearing and keep a record of documentary evidence submitted.

Subd. 4. Decision. The City Council shall make findings based on the evidence and shall make a decision on the recommendation to revoke, suspend, deny, or non-renew a license based on the findings. The City Council shall issue a written decision within 30 days following the date of the hearing by first class mail. The decision shall specify the license to which it applies (whether Massage Therapist license(s), Massage Therapy Establishment license, or both), the duration of the revocation, suspension, denial or non-renewal (whether permanent or temporary), and the conditions that must be met before the license may be reissued or reinstated (if any). Thereafter, and until a license is reissued or reinstated, no Massage Therapist that has had his or her license revoked, suspended, denied, or non-renewed may perform therapeutic massage in the City of Hopkins; and no Massage Therapy Establishment that has had its license revoked, suspended, denied, or non-renewed may offer therapeutic massage in the City of Hopkins, or allow another to do so.

Subd. 5. License Process after Revocation, Suspension, Denial or Renewal Declination. After the City Council revokes, suspends, denies or declines to renew a license, no license shall be issued until the City Manager determines that the applicant/licensee has remedied the conditions identified by the City Council as the basis for its action. The re-issuance of a license after suspension, revocation, denial or non-renewal is discretionary. Any application to obtain a Massage Therapist license or Massage Therapy Establishment license after the City Council has revoked, suspended, denied or declined to renew a license must be accompanied by all fees required by this section.

Subd. 6. Temporary suspension. The City Manager may temporarily suspend a Massage Therapist license or a Massage Therapy Establishment license for not more than 21 days pending a hearing before the City Council for any conduct reasonably believed to violate the provisions of this Section 1185 or constitute a crime of moral turpitude related to the license.

1185.20. Effect of Revocation, Suspension, Denial, or Non-Renewal. If a license is revoked, suspended, denied or not renewed by the City Council, it shall be unlawful for a Massage Therapist or a Massage Therapy Establishment to offer therapeutic massage until such time as a valid license has been issued.

1185.21 License Posted. A Massage Therapist license and a Massage Therapy Establishment license must be posted in a conspicuous place where all patrons may see it.

1185.23 Hours of Operation. A massage therapist may not give to any patron any massage treatment between the hours of 10:00 p.m. and 8:00 a.m. Any treatment in process at 10:00 p.m. must end at 10:00 p.m.

1185.25 Home Occupation. Whenever massage therapy is conducted in a residential area as a home occupation, the person(s) conducting the business will adhere to all aspects of the Zoning Ordinance in relation to home occupations. In addition, massage therapy in home occupations will be limited to one area and one table in operation at any given time.

1185.27 Inspection by City Officials. Subdivision 1. During any hours in which a licensee is performing massage therapy treatments, the area where the service is being performed shall be open to inspection by City inspectors and police officers.

Subd. 2. Each licensed Massage Therapist shall be responsible for adhering to the following minimum requirements for the health and safety of all patrons:

- a) The massage table shall have a washable surface
- b) The massage table shall be covered with a disposable paper cover or with a sheet that is washable.
- c) A clean paper cover or washable sheet must be used for each patron and the massage therapist must have enough clean covers on hand to accommodate the number of patrons scheduled on one day.
- d) Used washable covers shall be placed in covered containers until they are washed.
- e) Used paper covers shall be placed in covered waste containers.
- f) Lotions used in the treatment shall be stored in covered containers.
- g) The massage therapist shall wash his/her hands with soap and warm water immediately before beginning a treatment on each patron and use paper towels for hand wiping. Paper towels must be stored in a covered container.
- h) Bathroom facilities shall be made available to patrons. Paper towels, which shall be stored in covered containers, shall be provided for hand drying.
- i) Bathrooms shall be kept in clean repair.
- j) The floor shall be kept free of dust and debris.
- k) No food or drink shall be allowed in the treatment area.
- l) Implements used directly on the skin shall be cleaned and sanitized after use on each patron. Such implements shall be stored in closed containers with a dry sanitizer.

Subdivision 2. Massage Therapists that are licensed by the City of Hopkins shall follow and adhere to the Code of Ethics for Massage Therapists as published by the National Certification Board for Therapeutic Massage and Bodywork. This shall in no way require membership with American Massage Therapy Association.

Subdivision 3. The holder of a Massage Therapy Establishment license is responsible for supervising the conduct of all Massage Therapists providing therapeutic massage at that establishment and ensuring they conform to the requirements of this Section.

1185.29. Penalties. A person who violates any of the provisions of Section 1185 may be charged with a misdemeanor or be subject to the issuance of an administrative citation as provided in Section 355 or both. Each day that a violation continues shall be deemed a separate offense. The City Manager or designee may post notice at the business location notifying the public of the license suspension, revocation, or non-renewal of a Massage Therapist license or Massage Therapy Establishment license.

This section of the City Code was added by Ordinance 99-931

This section was amended by Ordinance 2011-1040

## Chapter 15

# THERAPEUTIC MASSAGE ENTERPRISES

### 3-15-1: DEFINITIONS:

As used in this chapter, the terms defined in this section shall have the following meanings ascribed to them:

**APPLICANT:** Any person filing an application with the city seeking an individual massage therapist or massage enterprise license pursuant to this chapter.

**MASSAGE ENTERPRISE:** Operation of a therapeutic massage business or the provision of therapeutic massage services.

**MASSAGE SERVICES:** A business or person offering or providing therapeutic massages to others where a fee is charged directly or indirectly, whether or not the massage services are rendered at the licensed premises.

**MASSAGE THERAPIST:** A person who practices or administers therapeutic massage.

**THERAPEUTIC MASSAGE:** The rubbing, stroking, kneading, tapping, or rolling of the body of another with the hands or objects for the exclusive purpose of physical fitness, relaxation, or beautification, and for no other purpose.

**THERAPEUTIC MASSAGE BUSINESS:** Any establishment or place providing to the public at large therapeutic massage services, other than a hospital, sanatorium, rest home, nursing home, boarding home, or other institution for the hospitalization or care of human beings, duly licensed under the provisions of Minnesota statutes, sections 144.50 through 144.69. (Ord. 1315, 3-18-2014; amd. Ord. 1321, 6-3-2014)

### 3-15-2: LICENSE REQUIRED:

No person shall provide massage services or engage in the business of operating a "massage enterprise" defined in section 3-15-1 of this chapter, either exclusively or in connection with any other business enterprise, without first obtaining a license issued by the city. A therapeutic massage enterprise having an establishment or location within the city must meet all of the requirements of title 10 of this code. An applicant having an establishment or location within the city may apply for one license for all of its employees, contractors or other persons who provide massage services at the licensed premises. An individual who provides massage services within the city at a location other than a licensed premises must obtain a massage enterprise license. (Ord. 1315, 3-18-2014)

### 3-15-3: LICENSING REQUIREMENTS:

The city is empowered to conduct any and all investigations to verify the information on applications submitted under this section, including ordering a computerized criminal history inquiry and/or a driver's license/identification history inquiry on the applicant.

(A) Application: An application for a license, including a license renewal, must be made on a form provided by the city and all persons performing massage therapist services for the massage enterprise must be listed on the application. The applicant and all therapists must disclose on the application if they have ever used or been known by a name other than the primary name listed and if so, must provide that name or names and information concerning the dates and places where that name was used. The city manager or designee shall approve the issuance of a license by the city to an applicant within thirty (30) days after receipt of an application unless the manager finds one or more of the following to be true:

1. An applicant is under eighteen (18) years of age.
2. An applicant is overdue in his payment to the city of taxes, fees, fines, utility charges or penalties assessed against or imposed upon the applicant in relation to a therapeutic massage business.
3. An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.
4. If the application is for a therapeutic massage enterprise having an establishment or location within the city, the premises to be used for the massage enterprise has not been approved by the appropriate city personnel as being in compliance with applicable laws and ordinances.
5. The proposed location of the massage enterprise does not meet all of the requirements of title 10 of this code.
6. The license fee required by this chapter has not been paid.
7. An applicant or any employee, contractor or other person associated with the business or performing massages at the licensed premises or as part of the licensed business:
  - a. Has been convicted of a felony or any sexually oriented crime or ordinance violation, or has been determined to have engaged in any conduct prohibited by Minnesota statutes 146A.08, within five (5) years of the date an application for a license is filed with the city, or
  - b. Has been convicted of a felony and required to register as a predatory offender under Minnesota statutes 243.166 or similar law in Minnesota or elsewhere within ten (10) years, or

- c. Has had a massage therapist license revoked or denied during renewal by the city or other local government within five (5) years, or
- d. Is not a United States citizen or cannot provide proof of their eligibility to work in the United States.

8. An applicant and all employees or other persons performing massage therapist services at the premises or for the massage enterprise cannot document:

- a. A certificate of national certification for therapeutic massage and body work by the National Certification Board Of Therapeutic Massage And Body Work, an affiliate of the American Massage Therapy Association; or
- b. A diploma or certificate of graduation showing completion of a program of at least five hundred (500) contact hours of combined massage therapy theory and practice training from a school approved or accredited by the American Massage Therapy Association, the Commission On Massage Therapy Accreditation (COMTA), the International Massage And Somatic Therapies Accreditation Council (MSTAC), or other agency recognized by the United States department of education or the city;
- c. That they have previously been licensed or employed as a massage therapist by a licensed massage enterprise in the city.

(B) Applicant: If a person who wishes to operate a "massage enterprise" as described in section 3-15-1 of this chapter is an individual, the individual must sign the application for a license as applicant. If an applicant is other than an individual, each individual who has a ten percent (10%) or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under this section and shall be considered a licensee if a license is granted.

(C) Appeal: The fact that a conviction or license revocation is being appealed shall have no effect on the disqualification of the applicant.

(D) Person Receiving Massage Therapy: The person receiving massage therapy shall at all times have his/her anus, intergluteal cleft (buttocks crease) and genitals covered with clothing or properly draped with nontransparent material. The person who is receiving massage therapy of the breast or buttocks (gluteal) shall have the breast or buttock (gluteal muscle) that is not then immediately receiving massage therapy properly covered and draped with nontransparent material.

- (E) Minors: No person shall give, or assist in the giving, of any massage to any person under the age of eighteen (18) years, unless the parent or guardian of such minor person has consented thereto in writing.
- (F) List Of Services: The operator of the massage enterprise or the responsible employee shall also post or maintain a list of services available and the cost of each. No applicant or authorized person to perform massages shall offer or perform any service other than those posted or listed.
- (G) Complementary And Alternative Health Care Client Bill Of Rights: The operator of the massage enterprise and/or therapist must provide clients/customers with the complementary and alternative health care client bill of rights as stated by Minnesota statute<sup>1</sup>, must have the client sign a written statement attesting that the client has received the statement, and must comply with all other requirements of state law in chapter 146A or other applicable law. (Ord. 1315, 3-18-2014)

### **3-15-4: LICENSE FEES; LICENSE INVESTIGATION FEES:**

The annual fee for a license and the investigation fee for the purpose of establishing a licensed massage enterprise shall be established from time to time by resolution or ordinance of the city council. In the event that the license is denied upon application, the license fee shall be refunded; however, no part of the license investigation fee shall be returned to the applicant. No part of the annual license fee shall be refunded if the license is suspended, revoked or discontinued. The initial license fee may be prorated. (Ord. 1315, 3-18-2014)

### **3-15-5: INSPECTION:**

- (A) An applicant or licensee shall permit appropriate city personnel or its authorized representatives and agents to inspect the licensed premises for the purpose of ensuring compliance with the law, at any time the business is occupied or open for business.
- (B) An applicant or licensee shall meet the following requirements regarding sanitation and health:

1. A therapeutic massage enterprise must take reasonable steps to prevent the spread of infections and communicable diseases on the licensed premises.
2. A therapeutic massage enterprise must be equipped with adequate and conveniently located toilet room(s) for the accommodation of its employees and patrons. The toilet room(s) must be well ventilated by natural or mechanical methods and be enclosed with a door. The toilet room(s) must be kept clean and in good repair and be fully and adequately illuminated.
3. A therapeutic massage enterprise must provide single service disposal paper or clean linens to cover the table, chair, furniture or area on which the patron receives the massage and must be sanitized after each massage.
4. Massage tables, chairs or furniture on which the patron receives the massage must have surfaces that can be readily cleaned and disinfected after each massage.
5. The therapeutic massage therapist must wash the therapist's hands and arms with water and soap, antibacterial scrubs, alcohol or other disinfectants prior to and following each massage service performed.
6. Rooms in a therapeutic massage enterprise must be fully and adequately illuminated.
7. A therapeutic massage enterprise must have a janitor's closet that provides for the storage of cleaning supplies.
8. Therapeutic massage enterprises must provide adequate refuse receptacles.
9. Therapeutic massage enterprises must be maintained in good repair and sanitary condition.
10. Therapeutic massage enterprises must comply with the requirements of the Minnesota clean indoor air act and subsequent amendments.
11. Massage therapists must wear clean clothing when performing massage services.  
(Ord. 1315, 3-18-2014)

### **3-15-6: GROUNDS FOR SUSPENSION OR REVOCATION:**

(A) Suspension: The city manager or designee shall suspend a license for a period not to exceed thirty (30) days if the manager or designee determines that a licensee or an employee of a licensee has:

1. Violated any provisions of this chapter;
2. Engaged in excessive use of alcoholic beverages or use of illegal drugs while on the licensed premises, or while performing therapeutic massage services;

3. Refused to allow an inspection of the licensed premises as authorized by this chapter;
4. Demonstrated inability to operate or manage the massage enterprise in a peaceful and law abiding manner thus necessitating action by law enforcement officers;
5. Been found not to be fully clothed. The licensee or employee of the licensee shall not expose his/her breast, buttocks, anus, or genitals.

(B) Revocation: The city manager shall revoke a license if a cause of suspension in subsection (A) of this section occurs and the license has been suspended within the preceding twelve (12) months, or if the city manager or designee shall determine that:

1. A licensee gave false or misleading information in the material submitted during the application process;
2. A licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;
3. A licensee or an employee knowingly operated the massage enterprise during a period of time when the licensee's license was suspended;
4. A licensee, employee or person performing massage services for the massage enterprise has been convicted of an offense listed in subsection 3-15-3(A)7 of this chapter;
5. A licensee is delinquent in payment to the city for ad valorem taxes, local lodging tax, or other taxes or fees related to the massage enterprise.

(C) Additional Requirement: The city council may base denial, suspension, revocation, or nonrenewal of a license upon any additional grounds which they may, in their sole discretion, impose.

(D) Conviction Appeal: The fact that a conviction is being appealed shall have no effect on the revocation. (Ord. 1315, 3-18-2014)

### **3-15-7: APPEAL:**

(A) Notice Of Action: If the city manager or designee denies the issuance of a license, or suspends, or revokes a license, the manager or designee shall send to the applicant, or licensee, by certified mail, return receipt requested, written notice of the action, and the

right to an appeal. The aggrieved party may appeal the decision of the city manager or designee in writing within ten (10) days of receiving notice of the city's action. The filing of an appeal stays the action of the city manager or designee in suspending or revoking a license until the city council makes a final decision.

- (B) Hearing: The city council may appoint a committee of the council or an independent hearing officer to hear the matter, report findings of fact and a recommendation of disposition to the council. Hearings on the appeal shall be open to the public and the licensee or applicant shall have the right to appear and be represented by legal counsel and to offer evidence in its behalf. At the conclusion of the hearing, the city council shall make a final decision. (Ord. 1315, 3-18-2014)

### **3-15-8: EXPIRATION OF LICENSE:**

- (A) Each renewal license shall be issued for a maximum period of one year. All licenses expire on June 30 of each year. Each license may be renewed only by making application as provided in section 3-15-3 of this chapter.
- (B) When the city manager or designee denies renewal of a license, the applicant shall not be issued a license unless the city manager or designee finds that the basis for denial of the renewal license has been corrected or abated, and ninety (90) days have elapsed since the date denial became final. (Ord. 1315, 3-18-2014)

### **3-15-9: RESTRICTIONS AND REGULATIONS:**

- (A) Compliance With Law: The licensee and any person in his/her employ or agents or officers thereof and any and all persons with an interest in or providing massage therapist services at or as part of said business shall comply with applicable ordinances, regulations, and laws of the city, the state of Minnesota, and the United States.
- (B) Hours Of Operation: Licensees or employees of licensees shall not perform massages nor shall massage patrons be permitted on the licensed premises, if any, between the hours of eleven o'clock (11:00) P.M. and six o'clock (6:00) A.M.

- (C) Posting Of License: The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the licensed premises, if any. The license shall be posted in a conspicuous place at or near the entrance to the licensed premises so that it may be easily read at any time.
- (D) Transfer Of License Prohibited: A licensee shall not transfer his/her license to another, nor shall a licensee change the location of a massage enterprise under the authority of a license without providing the city with notice of a change in location prior to such a change occurring.
- (E) Windows: The exterior windows of the commercial licensed premises must not be one hundred percent (100%) opaque during hours that the licensed premises is open for business, except for windows in massage rooms and restrooms.
- (F) Advertising: No licensee shall advertise through any media that is classified for adults only or for sexually oriented business or similar classification, or use any advertising that refers to the massage services as appealing to or satisfying an erotic or prurient interest, lust, sexual or passionate desire. (Ord. 1315, 3-18-2014)