

Chapter 17 - MASSAGE ESTABLISHMENTS ORDINANCE

DRAFT

ARTICLE I. - IN GENERAL

Sec. 17-1. Definitions.

Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning and application of words and phrases used in this chapter.

Chief shall mean the Chief of Police of the San Antonio Police Department or designee.

Department shall mean the San Antonio Police Department.

Employee shall mean any person, other than a masseur, who renders any service in connection with the operation of a massage business and who receives compensation from the operator of the business or from patrons.

Massage Establishment shall mean a place of business that advertises or offers massage therapy or other massage services. The term includes a place of business that advertises or offers any service described by a derivation of the terms “massage therapy” or “other massage services” to include aromatherapy and spa services.

Massage therapy shall mean the manipulation of soft tissue by hand or through a mechanical or electrical apparatus for the purpose of body massage. The term includes effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction, nerve strokes, and Swedish gymnastics. Massage therapy may include the use of oil, lubricant, salt glows, heat lamps, hot and cold packs, jacuzzi, aromatherapy, and sauna. The terms “therapy” and “therapeutic” do not include diagnosis, the treatment of illness or disease, or any service or procedure for which a license to practice medicine, chiropractic, physical therapy, or podiatry is required by law.

Masseur shall mean any person who engages in the practice of massage therapy as herein defined and who is licensed by the Texas Department of Licensing and Regulation. The use of the masculine gender in this Chapter shall include in all cases the feminine gender as well.

Patron shall mean any person who receives massage therapy under such circumstances that it is reasonably expected that he or she will pay money or give any other consideration therefor.

TDLR shall mean the Texas Department of Licensing and Regulation.

Sec. 17-2. Exceptions.

The provisions of this chapter shall not apply to hospitals, nursing homes, sanitariums or persons working under the direction of any such person or in any such establishment, nor shall this chapter apply to barbers, cosmetologists, chiropractors, physical therapists, assistant physical therapists or athletic trainers, lawfully carrying out their particular profession or business and holding a valid unrevoked license or certificate of registration issued by the State.

ARTICLE II. OPERATION REGULATIONS

The following regulations apply to all Massage Establishments, regardless as to whether the establishment is required to maintain a City permit.

Sec. 17-3. State License required.

All persons engaging in the business of massage therapy as defined in this chapter shall have an establishment and/or individual license as a masseur from the Texas Department of Licensing and Regulation, regardless as to whether the establishment itself is required to have a City permit.

Sec. 17-4. Display of licenses and permits.

The massage establishment shall prominently display its license from the Texas Department of Licensing and Registration at the entrance to the premises.

The massage establishment shall prominently display its City of San Antonio permit, if so required to obtain, at the entrance to the premises.

The individual masseur shall display his license issued by the Texas Department of Licensing and Regulation intended for massage therapy at the entrance to the premises.

The massage establishment shall prominently display its Certificate of Occupancy at the entrance to the premises.

Sec. 17-5. Hours.

No massage business shall be kept open for any purpose between the hours of 10:00 p.m. and 8:00 a.m.

Sec. 17-6. Alcoholic beverages prohibited.

No person shall sell, give, dispense, provide or keep or cause to be sold, given, dispensed, provided or kept, any alcoholic beverage on the premises of any massage business.

Sec. 17-7. Entrances, exits.

No massage business shall have any entrance or any exit way providing a direct passageway to any other type of business or residence.

Sec. 17-8. Residential use prohibited.

No massage establishment shall be located in a zone other than commercial and shall not be in or *used* for residential purposes. The Zoning Unit of the Development Services Department shall inspect for compliance on a regular basis.

Sec. 17-9. Health and Safety

All massage establishments operating under the authority of this chapter are declared to be public places, and shall not, during business hours, have the doors to the entrances or exits of

such establishments locked or obstructed in any way so as to prevent free ingress and egress of persons; provided, however, such doors may be closed.

No metal door, or other solid barrier requiring action on the part of the person in charge to allow entry, shall be installed in front of the passageway to the interior of the massage establishment's area containing massage therapy rooms.

All requirements of the International Fire Code, International Building Code, and San Antonio Property Maintenance Code shall be adhered to and inspected on a regular basis.

Sec. 17-10. Sanitation.

(a) All premises used pursuant to this chapter shall be periodically inspected during regular business hours for safety of structure and adequacy of plumbing, ventilation, heating and illumination.

(b) Floors shall be free from any accumulation of dust, dirt and refuse. Well marked toilet and hand washing facilities for permittees, employees and patrons shall be provided. All walls, ceilings, windows and doors shall be free of dust, dirt, and refuse. In high humidity areas, including toilet rooms, shower rooms, steam rooms, locker rooms, and other such rooms, the walls, ceilings and floors shall be constructed or covered with a material that is smooth, non-absorbent and easily cleaned.

Sec. 17-11. Towels, cloths, sheets, robes.

Towels, cloths, sheets, and robes shall not be reused. Each patron shall be provided clean, unused linen, towels, cloths, sheets, and robes. Heavy white paper may be substituted for sheets provided that such paper is changed for every patron. Soiled linens and towels shall be stored in a clearly marked receptacle and shall not be reused prior to laundering.

Sec. 17-12. Animals prohibited.

No animals, exempting service animals, shall be permitted within a massage establishment at any time.

Sec. 17-13. Equipment.

All equipment used for the treatment of patrons at establishments regulated by this chapter shall be kept in a clean and sanitary condition, and the equipment shall be kept in good working order.

ARTICLE III. – CITY PERMIT

Sec. 17-14. Establishments which must register with the City.

The requirements of this article shall apply only to those establishments that have the following violations within a 12 month period:

- a. Charged with any violation of the Penal Code as listed in section 17-23; or
- b. Three or more violations of the San Antonio Property Maintenance Code; or
- c. Failure to post the TDLR license for business, owner, and/or masseur.

If an establishment is charged with any of the violations above, it shall be required to obtain and maintain a City permit for a minimum of three years.

Sec. 17-15. Determination that the establishment must register with the City.

(1) After notice of the Chief's determination that the establishment must apply for a City Permit, the establishment shall have 10 days from the mailing of the Chief's decision to submit its permit application to the Department pursuant to section 17-16.

(2) If the establishment disagrees with the Chief's determination that the establishment must apply for a City Permit, the establishment must send a protest letter to the Chief within 10 days of the mailing of the Chief's decision.

(a) The appeal will follow the administrative appellate process as described in section 17-24.

(3) Failure to submit the permit application registration paperwork within 10 days, or failure to protest the designation within the 10 days, will result in criminal charges against the business and the business owner, as well as administrative penalties including but not limited to

financial penalties, revocation of the establishment's Certificate of Occupancy and issuance of a notice to vacate.

Sec. 17-16. Application for permit.

Any person required to have a City massage establishment permit shall file a written application with the Chief on a form to be furnished by the Department. The applicant shall submit the following:

- (1) The type of ownership of the business, i.e. whether individual, partnership, corporation or otherwise;
- (2) The name, style and designation under which the business or practice is to be conducted;
- (3) The business address and all telephone numbers where the business is to be conducted;
- (4) A complete list of the names and the residence addresses of all masseurs and employees in the business and the name and residence address of the manager or other person principally in charge of the operation of the business, if said employees and masseurs have been hired as of date of application. This information shall be updated once employees and masseurs have been hired;
- (5) The following personal information concerning the applicant, if an individual; and concerning each stockholder holding more than ten (10) percent of the stock of the corporation, each officer and director, if the applicant is a corporation; and concerning the partners, including limited partners, if the applicant is a partnership; and the holder of any lien, of any nature, upon the business and/or the equipment used therein; and concerning the manager or other person principally in charge of the operation of the business:
 - a. The name(s), complete residence addresses and residence telephone numbers;
 - b. Written proof of age;
 - c. Height, weight, color of hair and eyes, and sex;
 - d. Two (2) front face portrait photographs taken within thirty (30) days of the date of application and at least two (2) by two (2) inches in size;
 - e. The massage establishment or similar business history from five (5) years prior to the date of application, including but not limited to, whether or not such person

previously operated in this or another city or state under license or permit; if any such license or permit had been denied, revoked or suspended and the reason therefor.

f. All criminal arrests other than misdemeanor traffic violations, fully disclosing the jurisdiction in which arrested and the disposition thereof;

g. Fingerprints obtained by applicant at a licensed facility and provided to the Chief.

Said fingerprints shall be retained on file by the Chief.

(6) Such other information and identification as shall be deemed necessary by the Chief to discover the truth of the matters hereinabove required to be set forth in the application;

(7) Documentation of personal background check conducted at a licensed facility.

(8) Written declaration by the applicant, under penalty of perjury, that the foregoing information contained in the application is true and correct, said declaration being duly dated and signed and submitted to the Department.

Sec. 17-17. Approval.

(1) In the case of applications for massage establishment permits, the City shall cause to be conducted an investigation of the premises where the massage operations is to be carried out, for the purposes of assuring that such premises comply with all requirements as set forth in this chapter and the State, and with all regulations of public health, safety and welfare.

(2) Before any permit shall be issued under this article, the Chief shall first sign his approval for the application.

(3) A new permit shall be required for any change in ownership.

Sec. 17-18. Issuance or denial of massage establishment permits.

The Chief shall issue the City massage establishment permit within thirty (30) days of receipt of the application unless he finds that:

(1) The correct permit fee has not been tendered to the City concurrently with the application;

(2) The operation, as proposed by the applicant, if permitted, would not comply with all applicable laws, including but not limited to the City's building, zoning and health regulations;

- (3) The applicant, if an individual, or any of the stockholders holding more than ten (10) percent of the stock of the corporation, or any of the officers and directors, if the applicant is a corporation, or any of the partners, including limited partners, if the applicant is a partnership, or the holder of any lien of any nature on the business and/or equipment used therein; and the manager or other person principally in charge of the operation of the business, have been convicted of a felony or misdemeanor involving moral turpitude within five (5) years of the submittal of application;
- (4) The applicant has knowingly made any false, misleading or fraudulent statements of fact in the permit application or in any document required by the City in conjunction therewith;
- (5) The applicant has had a massage establishment, masseur or other similar permit or license denied, revoked or suspended by the City or any other state or local agency within five (5) years prior to the date of application;
- (6) The applicant, if an individual, or any of the officers and directors if the applicant is a corporation, or any of the partners, including limited partners, if the applicant is a partnership, and the manager or other person principally in charge of the operation of the business, is not over the age of eighteen (18) years.

Sec. 17-19. Fees generally.

The permit fee for a massage establishment shall be seventy-five dollars (\$75.00) per year made payable to the City of San Antonio and submitted to the Department.

Sec. 17-20. Fees for separate locations.

Should any massage establishment have more than one location where the business of massage is pursued, then a permit, stating both the address of the principal place of business and of the other location shall be issued by the Chief on the tender of a permit fee of thirty-five dollars (\$35.00) per permit per additional location. Permits issued for other locations shall terminate on the same date as that of the principal place of business, regardless of the date of issuance.

Sec. 17-21. Non-Refundable Fees

All fees required in this chapter are non-refundable. Payment of the fees shall be by cashier's check or money order and made payable to the City of San Antonio.

Sec. 17-22. Renewal of permits; updated list of employees and masseurs.

Each permit shall be valid for a term commencing upon issuance and shall expire on the 31st of December, unless sooner revoked or surrendered. Each permit shall be subject to renewal as of its expiration date by the filing of a renewal application with the Chief. Renewal applications must be filed at least ninety days prior to the expiration date of the permit that is to be renewed. The required background check shall be conducted on a yearly basis upon receipt of a renewal application.

Operator shall provide an updated list of personnel on a quarterly basis with masseur name and accompanying TDLR permit for the establishment and individual masseurs.

Sec. 17-23. Revocation, Suspension, Refusal to Apply or Renew Permits.

Any of the following charged offenses in one (12) month period shall consist of grounds for revocation, suspension, or refusal to renew permits:

- a. Any of the following offenses as described in Chapter 43 of the Texas Penal Code:
 - (i) Prostitution;
 - (ii) Promotion of prostitution;
 - (iii) Aggravated promotion of prostitution;
 - (iv) Compelling prostitution;
 - (v) Obscenity;
- b. Any of the following offenses as described in Chapter 21 of the Texas Penal Code:
 - (i) Public lewdness; or
 - (ii) Indecent exposure; or
- c. Harboring a runaway child as described in Chapter 25 of the Texas Penal Code;
- d. Criminal attempt, conspiracy or solicitation to commit any of the above offenses;
- e. Human trafficking as described in Chapter 20A of the Texas Penal Code;
- e. Human smuggling as described in Chapter 20.05 of the Texas Penal Code; or
- g. Any violation of this Chapter.

Sec. 17-24. Denial, suspension and revocation of permits; hearing board; appeal.

(a) A massage establishment permit may be denied, revoked or suspended by the Chief in any case where any of the provisions of this chapter are violated, or where any employee of the permittee is or was engaged in any conduct which violates any of state laws or city ordinances at the establishment and the permittee has actual or constructive knowledge thereof. A criminal charge is sufficient to move forward with suspension or revocation regardless of whether there has been a conviction at that time.

(b) A Board comprised of the Chief, Development Services Director or designee, and the City Manager or designee shall hear all appeals in which a permit has been required, denied, revoked or suspended. The Board shall have the authority to determine, after hearing, to uphold, modify, or reverse the decision by the Chief.

(c) An appeal must be filed with the Vice Division of the Department within 10 calendar days of the decision of the Chief.

(d) The appellate hearing shall be held no later than twenty (20) business days from receipt of appeal.

(e) Written decision of the Board shall be issued within (10) calendar days of hearing.

(f) The decision of the Board shall be final.

(g) If a massage establishment permit is revoked, the establishment's Certificate of Occupancy shall be revoked pursuant to Chapter 10-12(d).

Sec. 17-25. Transfer of permit prohibited.

No massage establishment permit is transferable, severable or divisible, and such authority as a permit confers shall be conferred only upon the permittee named therein.

ARTICLE IV – PENALTY PROVISIONS

Sec. 17-26. Penalty.

Any person who intentionally, knowingly or recklessly violates any provision of this chapter shall be deemed to be guilty of a misdemeanor and shall upon conviction be punished by a fine not exceeding five hundred dollars (\$500.00).

Sec. 17-27. Authority to File Suit.

The City Attorney is hereby authorized to file suit to enjoin any violation of this chapter in addition to or in lieu of any other remedies set forth in this chapter or under any other applicable state statute to enjoin the violation of this chapter.

Sec. 17-28. Remedies.

Civil enforcement and criminal penalties are alternative remedies that may be sought independently of each other. Criminal prosecution may occur regardless of pursuit of civil remedies and vice versa.