

CHAPTER 6

THERAPEUTIC MASSAGE ENTERPRISES

SECTION:

- 3-6-1: Purpose**
- 3-6-2: Definitions**
- 3-6-3: License required**
- 3-6-4: License application**
- 3-6-5: License eligibility**
- 3-6-6: Restrictions and regulations**
- 3-6-7: Display of license**
- 3-6-8: Prohibited business or operations**
- 3-6-9: Appeal**
- 3-6-10: Penalty**
- 3-6-11: Severability**

3-6-1: PURPOSE:

The city recognizes therapeutic massage, as distinguished from other forms of massage, as a scientific health care and/or maintenance technique or procedure for the human muscles, tendons, tissues, and the like. The city also recognizes the potential for illicit massage operations or establishments in the wake of legitimate, professional therapeutic massage establishments. Accordingly, in order to prevent illicit massage operations and protect against the existence of illicit massage establishments or operations in the city and to protect the public's health, safety, and welfare, including the protection of the city's legitimate massage therapists' profession and reputation, the city deems it necessary to regulate therapeutic massage establishments and massage therapists through the licensing process. (Ord. 544, 10-2-2019)

3-6-2: DEFINITIONS:

As used in this Chapter, the following words and terms shall have the meanings stated:

APPROVED INSTITUTION:	An educational institution holding approved status with the United States Department of Education, Minnesota Office of Higher Education, or by any state licensing board.
APPROVED PROGRAM:	A professional massage program or educational institution approved by the Commission on Massage Therapy Accreditation (COMTA) or the National Accrediting Commission of Career Arts and Sciences (NACCAS).
CONTINUING EDUCATION CLASS:	A post graduate continuing education class, provided it is an approved class with the National Certification Board for Therapeutic Massage and Bodywork or another nationally recognized certification licensing organization.
MASSAGE THERAPIST:	A person who practices or provides therapeutic massage to another for a fee or other consideration paid either directly or indirectly. A person licensed as a medical doctor, chiropractor, osteopath, licensed nurse, physical therapist, or athletic director or trainer shall not be deemed as a massage therapist. Likewise, a podiatrist, beautician (cosmetologist) or barber who confines his/her treatment to the scalp, face, and neck or the lower leg and feet in the case of a pedicure shall not be deemed as a massage therapist.
MASSAGE THERAPY BUSINESS:	Any enterprise, establishment, or operation, whether under control of an individual or legal entity, providing or offering to provide massage therapy services within the city for a fee or other consideration paid either directly or indirectly, that: <ul style="list-style-type: none">A. Has one or more massage therapists, employed or contracted to provide massage therapy services for the massage therapy business; or

B. Is located in a fixed location in a nonresidential district within the city wherein massage therapy services are provided. Any health or medical facility, office, or clinic operated by state licensed medical professional(s) or any health or medical-related business operated by state licensed medical professional(s) which provides therapeutic massage to its patients shall not be deemed as a massage therapy business.

MASSAGE THERAPY OR THERAPEUTIC MASSAGE:

The rubbing, tapping, pounding or kneading of a person's skin, muscles, and tissues or the stretching of body limbs (e.g. Thai massage) for the purpose of easing mental and physical tension, the breaking up of fatty tissues, relaxing muscles, or alleviating muscle spasms, and the improvement of circulation through the body.

STUDENT OF MASSAGE THERAPY:

A person who is enrolled in and attends an approved institution or approved program as defined herein, or is attending a continuing education class. (Ord. 544, 10-2-2019)

3-6-3: LICENSE REQUIRED:

A. Massage Therapist License Required: Except as provided for by Minnesota Statutes, Section 471.709, as amended, it is unlawful for any person to practice therapeutic massage therapy or provide or offer to provide therapeutic massage therapy within the city without a license therefore issued by the city.

B. Massage Therapy Business License Required: It is unlawful for any person or entity to operate a massage therapy business within the city without a license therefore issued by the city.

C. Exceptions:

1. This section shall not apply to, and no massage therapy business license shall be required for a student of massage therapy, completing course work at an approved institution or an approved program of study, provided:

a. The massage therapy is provided during and as part of a course or clinical component of the approved institution's or program's course work, or during a continuing education class; and

b. The student of massage therapy is supervised by an instructor, certified by the approved institution, program, or sponsor of the continuing education class, while the student is providing or performing massage therapy. A notice, which advises the public that the person who may provide massage therapy services is a student of massage therapy and is not licensed by the city, shall be posted in a conspicuous location in the room in which the massage therapy is provided.

D. License Period And Renewal: A license issued under this chapter shall be an annual license, expiring on June 30 of each year. Any massage therapy business and/or therapist doing business within the city as of the effective date of this chapter, shall file all required license applications hereunder, along with the license and investigation fees, no later than May 1 of each year. A license may be annually renewed, provided the licensee complies with the renewal application process as follows:

1. The licensee shall complete the renewal application materials provided by the city;
2. The completed renewal application materials, along with the license fee, shall be filed with city clerk no later than May 1 of the renewal year; and
3. The massage therapy business license renewal application shall provide all information regarding ownership interests in the business.

E. License And Investigation Fees: The license and investigation fees shall be determined by the city council as set forth in the fee schedule.

1. All licenses shall expire on the last day of June in each year. Each license shall be issued for a period of one year, except that if a portion of the license year has elapsed when a new application is made, a license may be issued for the remainder of the year for a pro rata fee. In computing such fee, any unexpired fraction of a month shall be counted as one month.

2. In the case of a massage therapy business that is wholly owned and operated by a massage therapist licensed under this chapter and does not have any employee(s) or contracted person(s) other than the massage therapist licensed owner providing massage therapy services for or through the massage therapy business, only the massage therapist license fees shall be required.

3. If it is found at any time during the term of the license period that the massage therapy business is not wholly owned and operated by the massage therapist licensed under this chapter or it has an employee(s) or contracted person(s) other than the massage therapist licensed owner providing massage therapy services for or through the massage therapy business, then the massage therapy business license fees shall be required to be paid on a prorated basis for the remaining term of the massage therapy business license, in addition to any licensing fees required for the employee(s) or contracted

3-6-4: LICENSE APPLICATION:

A. Massage Therapy Business License Application. An original application for a license to operate a massage therapy business shall be filed, along with all required fees, with the city clerk. The investigation fee is applied to the city's costs of the background investigation of the massage therapy business and all persons or entities that individually have at least a five percent (5%) financial interest in the massage therapy business. The property containing the massage therapy business must be in compliance with all federal, state and local applicable laws and ordinances. The police department shall conduct the background investigation before consideration of the license by the city council. The application shall provide:

1. All applicants (business or individual):
 - a. Whether the applicant/owner is an individual, corporation, partnership, or other form of organization;
 - b. Full name, address, date and place of birth, and telephone number of the applicant, all owners and operators, including the designated on-site manager or agent of the applicant;
 - c. The address of the premises where the massage therapy business is to be located if proposed to have a fixed location in which the services are provided and if the applicant does not own the premises, a copy of the lease agreement to occupy the premises;
 - d. Statement of whether all taxes and special assessments due and owing on the premises on which the applicant proposes to operate the massage therapy business are current, and if taxes are delinquent, the years for which the taxes on the premises are delinquent (this information is required by the applicant only if the applicant or other entity in which the applicant has an interest has the legal duty to pay said property taxes or assessments due and owing, through an ownership interest or lease provision);
 - e. The name of the business if the business is to be operated under a name or designation other than the name of the applicant. This designation shall be accompanied by a certified copy of the certificate required by Minn. Stats. §§ 333.01 and 333.02;
 - f. Proof of general and professional liability insurance coverage in effect as required in this chapter;
 - g. The applicant shall produce at the time of filing an application the applicant's proof of identification, which may be established only by one of the following:
 - (1) A valid driver's license or identification card issued by Minnesota, another state, or a province of Canada, and including the photograph and date of birth of the applicant;
 - (2) A valid military identification card issued by the United States Department of Defense;
 - (3) A valid passport issued by the United States; or
 - (4) In the case of a foreign national, by a valid passport.

For purposes of proof of identification, the "applicant" shall mean the on-site manager or agent for a massage therapy business filing application and the natural person signing the application for a massage therapy business license;

h. The application shall identify the full name, address, date and place of birth, and telephone number of the natural person, designated by the applicant as the massage therapy business's on-site manager or agent, along with the notarized written consent of such a person to:

- (1) Take full responsibility for the conduct of the licensed premises operation; and
- (2) Serve as agent for service of notices and other processes relating to the licenses;

I. With respect to the owner, operator, or any person who has a five percent (5%) financial interest in the proposed licensed massage therapy business and the appointed on-site manager or agent of the applicant, information as to any and all criminal convictions of any state, county, or local law or regulation;

j. Proof of Workers' Compensation Insurance as required by Minnesota law; and

2. Individuals:
 - a. The full name, address, date and place of birth, and telephone number of the applicant;
 - b. Whether the applicant and on-site manager or agent have ever used or have been known by a name other than his or her name on the application, and if so, the name or names used and information concerning dates and places were used;
 - c. Whether the applicant is a United States citizen or is legally permitted to be in the United States and providing proof thereof;
 - d. The street addresses and cities at which the applicant and on-site manager or agent have lived during the preceding ten years;
 - e. Names, addresses, and dates of the applicant's and on-site manager's or agent's employers for the preceding ten years;

f. Whether the applicant and on-site manager or agent have ever been engaged in the operation and/or provision of massage services. If so, they shall furnish information as to the name, place, and length of time of the involvement in such an establishment; and

3. Partnerships:

a. The full name(s), address(es), date(s) and place(s) of birth, financial interests of all general partners and all of the information concerning each general partner that is required of individual applicants in provision (2) of this section;

b. The full names(s), address(es), date(s) and place(s) of birth, and telephone number(s) of the manager partner(s) and the interests of each managing partner in the massage therapy business;

c. A copy of the partnership agreement shall be submitted with the application. The license shall be issued in the name of the partnership; and

4. Corporations And Other Organizations:

a. The name of the corporation or business firm, and if incorporated, the state of incorporation;

b. A copy of the certificate of incorporation shall be attached to the application. If the applicant is a foreign corporation, a certificate of authority as required by Minn. Stat. § 303.06, shall be attached;

c. The name of the manager(s), proprietor(s) or other agent(s) in charge of the business and all of the information concerning each manager, proprietor, or agent that is required of applicants in provision (2) of this section;

d. A list of all persons who own or have a five percent (5%) or more 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.

B. Massage Therapist License Application. An original application for a massage therapist license shall be filed, along with all required fees, with the city clerk. The police department shall conduct a background investigation before consideration by the city council. The application for a license under this subsection shall be made on a form supplied by the city clerk and shall request the following information:

1. The applicant's full name, address, date and place of birth, telephone number, weight, height, eye color;

2. The name, address, and telephone number of the applicant's current employer, if applicable;

3. The applicant's employers for the previous ten years, including each employer's name and address and dates of employment;

4. The applicant's addresses for the previous ten (10) years;

5. Whether the applicant is a United States citizen or is legally permitted to be in the United States and providing proof thereof;

6. Whether the applicant has ever used or has been known by a name other than his or her name, and if so, the name or names used and information concerning dates and the county and state where used;

7. Proof of general and professional liability insurance coverage in effect as required in this chapter (proof of insurance coverage may not be available to the applicant at time of application, but proof of insurance coverage shall be submitted to the city clerk before a license is issued). The requirement to provide general liability insurance coverage shall not apply to a massage therapist who is an employee of a massage therapy business and covered by the massage therapy business general liability insurance policy;

8. The applicant shall produce at the time of filing an application the applicant's proof of identification, which may be established only by one of the following:

a. A valid driver's license or identification card issued by Minnesota, another state, or a province of Canada, and including the photograph and date of birth of the applicant;

b. A valid military identification card issued by the United States Department of Defense;

c. A valid passport issued by the United States; or

d. In the case of a foreign national, by a valid passport.

9. Information as to any and all criminal conviction(s) of any state, county, or local law or regulation;

10. One of the following:

a. Proof of successful completion of a minimum of five hundred (500) hours of therapeutic massage training/course work that includes subjects of anatomy, physiology, hygiene, ethics, massage theory and research, and massage practice from an approved institution or program; or

b. A diploma or certificate of graduation from a comprehensive massage therapy program consisting of the course work stated above in subclause a. issued to the applicant from an approved institution or an approved program; or

c. Proof of passing the National Certification Exam offered by the National Certification Board for Therapeutic Massage and Bodywork or proof of passing the Federation of State Massage Therapy Boards (FSMTB) Massage and Bodywork Licensing Examination (MBLEx). (Ord. 544, 10-2-2019)

3-6-5: LICENSE ELIGIBILITY:

A. A massage therapy business shall not be issued a massage therapy business license or any license previously issued may be revoked upon the following grounds:

1. The proposed fixed location or premises in which the massage therapy business proposes to provide massage therapy services is not located in a permitted zoning district for therapeutic massage services and has not received required permits under the City Code;
2. The owner, operator, or any person who has at least a five percent (5%) financial interest in the proposed licensed massage therapy business or the appointed on-site manager or agent of the applicant has a conviction for, or was charged with, but convicted of a lesser charge of a crime, or is under a stay of adjudication from, a charge involving a violation of any massage therapy-related regulation in any other jurisdiction, any prostitution-related offense, criminal sexual conduct, indecent exposure, surreptitious intrusion, disorderly house as defined by Minnesota Statutes, theft, felony drug offense, any crime of violence as defined by Minnesota Statutes, or any other similar crime or offense within five (5) years of the date of application;

3. The owner, operator, or any person who has at least a five percent (5%) financial interest in the proposed licensed massage therapy business had a massage therapist- or massage therapy business-related license in another jurisdiction that was suspended or revoked within ten years preceding the date of application.

4. The application failed to identify the full name, address, and date and place of birth of the natural person designated by the applicant as the massage therapy business's on-site manager or agent, along with the notarized written consent of such a person to:

- a. Take full responsibility for the conduct of the licensed premises and operation; and

- b. Serve as agent for service of notices and other process relating to the license;

5. The on-site manager or agent designated by the applicant is not a United States citizen or is not legally permitted to be in the United States;

6. The applicant provided false, misleading or misrepresented information in the application;

7. The massage therapy business is proposed to be operated on premises on which property taxes, assessments, or other financial claims by the state, county or city are due, delinquent, and unpaid (but not including delinquent taxes, assessments or other financial claims that are being appealed through the customary means by the applicant), provided the applicant or other entity in which the applicant has an interest has the legal duty to pay said taxes, assessments, or claims due and owing;

8. The applicant, if not covered by a massage therapy business insurance policy, does not have general or professional liability insurance coverage in effect as required in this chapter;

9. The applicant has been denied a license under this chapter within the preceding twelve (12) months; or

10. The applicant has employed or allowed massage therapists not licensed by the city to provide massage therapy at the business site licensed within the past twelve (12) months.

B. A massage therapist shall not be issued a massage therapist license or any license previously issued may be revoked upon the following grounds:

1. The applicant has a conviction for or was charged with, but convicted of a lesser charge or is under a stay of adjudication relating to, a crime involving a violation of any massage therapy-related regulation in any other jurisdiction, any prostitution-related offense, criminal sexual conduct, indecent exposure, surreptitious intrusion, disorderly house as defined by Minnesota Statutes, theft, felony drug offense, any crime of violence as defined by Minnesota Statutes, or any other similar crime or offense within five years of the date of application;

2. The applicant had a massage therapist or massage therapy business-related license in another jurisdiction that was suspended or revoked within ten (10) years preceding the date of application;

3. The applicant is not eighteen (18) years of age or older;

4. The applicant is not a United States citizen and is not legally permitted to be in the United States;

5. The applicant has not earned or did not provide:

- a. Proof of successful completion of a minimum of five hundred (500) hours of therapeutic massage training/course work that includes the subjects of anatomy, physiology, hygiene, ethics, massage theory and research, and massage practice from an approved institution or approved program; or

- b. Proof of a diploma or certificate of graduation in a comprehensive massage therapy program consisting of the course work stated above in subclause a. issued to the applicant from an approved institution or an approved program for massage therapy; or

c. Proof of passing the National Certification Exam offered by the National Certification Board for Therapeutic Massage and Bodywork or proof of passing the Federation of State Massage Therapy Boards (FSMTB) Massage and Bodywork Licensing Examination (MBLEX);

6. The applicant provided false, misleading or misrepresented information on the application;
7. The applicant does not have general and professional liability insurance coverage in effect as required in this chapter for applicants not covered by a massage therapy business insurance policy; or
8. The applicant has been denied a license under this chapter within the preceding twelve (12) months. (Ord. 544, 10-2-2019)

3-6-6: RESTRICTIONS AND REGULATIONS:

A. Massage therapy business licenses granted for massage therapy services or operation at a fixed location or premises do not permit the business to provide massage therapy services at any location other than the premises identified on the license, except a licensed massage therapist employed or contracted by the massage therapy business licensee may provide massage therapy services:

1. To a client at the client's residence or place of care if in a long- or short-term care facility, such as a hospital, nursing home, or convalescence facility; or
2. In connection with a special event or function whereby the massage therapist provides massage therapy services to attendees of the event or function.

B. The act of any employee of a massage therapy business licensee is deemed to be the act of the licensee. The licensee shall be responsible for all acts and conduct attributable to and in connection with massage therapy services provided by employees of the licensee or occurring on the premises of the massage therapy business.

C. The person who is receiving a massage shall at all times have his/her anus, intergluteal cleft (buttocks crease), and genitals covered with clothing or properly draped with non-transparent 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 non-transparent material.

D. The licensee and all employees of the licensee shall at all times be fully clothed and shall not expose his/her breast, buttocks, anus, or genitals.

E. At no time shall the massage therapist touch or offer to touch or massage the penis, scrotum, mons veneris, vulva, or vaginal area of any customer or person inquiring of or receiving massage therapy services.

F. No beer, liquor, narcotic drug, or controlled substances, as such terms are defined by state statutes or the City Code, shall be used or ingested or be present during any massage therapy session.

G. No doors or massage rooms, when occupied by one or more persons, shall be locked. All locks, if any, shall be keyed only from the exterior of the massage rooms.

H. Only massage therapists who are licensed by the city shall practice or provide therapeutic massage services for licensed massage therapy businesses or within the licensed massage therapy business premises as identified in its license.

I. The licensee shall comply with any and all provisions of this chapter, all provisions of the City Code, and any state law or regulation.

J. The licensee shall not provide any massage therapy services and the identified premises for a licensed massage therapy business shall not be open between the hours of 10:00 p.m. and 6:00 a.m. of any day.

K. The licensed premises under a licensed massage therapy business, if any, shall, during all operating hours, be open to inspection by any public health, building, zoning, code or police officer to determine whether this chapter and all other laws are being observed. All persons, as a condition to being issued such license, consent to such inspection by such officers. It is unlawful for any licensee or agent or employee of a licensee to hinder or prevent a city inspecting officer from making such inspection. The licensed premises must carry adequate property liability insurance coverage.

L. If a licensed massage therapy business's on-site manager or agent ceases to be located at the licensed premises or ceases to act in such capacity for the licensee without appointment of a successor, the license issued pursuant to such appointment shall be subject to revocation or suspension.

M. No license issued under this chapter may be transferred or assigned. Massage therapy business licenses shall terminate upon any change in officers or ownership interests of the licensee, unless the change is approved by the city council, in which case the license shall only continue in force until the end of the regular license term.

N. The licensee shall have in effect during the license period general liability and professional liability insurance providing minimum coverage of three hundred thousand dollars (\$300,000.00) combined single limit per occurrence. The requirement for general and professional liability insurance coverage shall not apply to a licensed massage therapist who is an employee of and covered under a massage therapy business general and professional liability insurance policy provided proof of such coverage is provided to the city. The licensee shall provide to the city a certificate of insurance evidencing the insurance coverage as required herein.

O. The licensee shall comply with all federal, state and local laws and ordinances of health and sanitation.

P. Violation of any law or regulation relating to the license issued under this chapter, or any building, safety or health regulation, shall subject the license to revocation or suspension.

Q. As of July 1, 2020, all massage businesses and therapists currently licensed in the City must comply with all provisions of this chapter when they renew their license. (Ord. 544, 10-2-2019)

3-6-7: DISPLAY OF LICENSE:

The license of the massage therapy business and of every massage therapist employed thereby, shall be displayed in an open and conspicuous place on the premises and shown to law enforcement officers upon request. (Ord. 544, 10-2-2019)

3-6-8: PROHIBITED BUSINESS OR OPERATIONS:

No massage therapy business shall be used or operated as or in conjunction with an adult use business as defined in this Code. (Ord. 544, 10-2-2019)

3-6-9: APPEAL:

A. Notice Of Action: If the city council denies the issuance of a license, or suspends or revokes a license, the administrator or designee shall send to the applicant, or licensee, by certified mail, return receipt requested, written notice of the action. The written notice shall also provide notice of the applicant or licensee's right to an appeal of the denial, suspension or revocation to a third-party hearing officer. The written notice of appeal must be filed with the city within ten (10) days of receipt of the notice of action.

B. Hearing: The hearing officer shall hold a hearing to consider the appeal within fourteen (14) days after the appeal request is received. The hearing officer shall make written findings of fact and a disposition on the matter. 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 on its behalf.

C. Suspension: The City Administrator or a designee may immediately suspend a license issued under this chapter for up to twenty (20) days upon the occurrence of any unlawful acts as identified in this chapter. Any adverse license action resulting from a suspension shall be processed, and is subject to appeal, as provided in this section. (Ord. 544, 10-2-2019)

3-6-10: PENALTY:

Violation of a provision of this chapter is a misdemeanor and, upon conviction thereof, a person may be punished by a fine of not more than one thousand dollars (\$1,000.00), or such other amount set by law, or imprisonment for a term not to exceed ninety (90) days, or such other term set by law, or both. Each act of violation and each day on which a violation occurs or continues is a separate violation. (Ord. 544, 10-2-2019)

3-6-11: SEVERABILITY:

In the event that a court of competent jurisdiction adjudges any part of this chapter to be invalid, such judgment shall not affect any other provision of this chapter not specifically included within the judgment. (Ord. 544, 10-2-2019)