

Section 447 - Therapeutic Massage Establishments and Massage Therapists

Section 447:00. Purpose. The purpose of this ordinance is to prohibit massage businesses and services to the public except those licensed as therapeutic massage establishments and massage therapists pursuant to this section. The licensing regulations prescribed herein are necessary to protect businesses that are operating legitimate establishments, to ensure physical facilities are clean, well maintained and safe, to prevent criminal activity and to protect the health, safety, and general welfare of the community.

Section 447:01. Findings of the City Council. The City Council makes the following findings regarding the need to license therapeutic massage establishments and therapists and to prohibit all other types of massage businesses and services to the public:

- (1) Persons who have recognized 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 establishments 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 establishments 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.

Section 447:02. Definitions.

Subd. 1. *Accredited Institution*. An educational institution holding accredited status approved by the United States Department of Education or Minnesota Office of Higher Education.

Subd. 2. *Accredited Program*. A professional massage program or educational institution accredited by the Commission on Massage Therapy Accreditation (COMTA).

Subd. 3. *Issuing Authority*. The City Council grants the authority to issue and renew licenses pursuant to this Section to the Health Director or designee.

Subd. 4. *Massage*. Any method of pressure on, or friction against, or the rubbing, stroking, kneading, tapping, pounding, vibrating, stimulating, stretching, or rolling of the external

parts of the human body with the hands or 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, power, cream, lotion, ointment, or other similar preparation.

Subd. 5. *Massage Therapist*. 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 establishment licensed by the City; and
- (3) Has completed certified therapeutic massage training with content that includes subjects of anatomy, physiology, hygiene, ethics, massage theory and research, and massage practice from an Accredited Institutions or Accredited Program approved by the Issuing Authority.

Subd. 6. *Operate*. To own, manage, or conduct or to have control, charge, or custody over.

Subd. 7. *Persons*. Any individual, firm, association, partnership, corporation, joint venture, or combination of individuals.

Subd. 8. *Therapeutic Massage Establishment*. Any individual, firm, association, partnership, corporation, joint venture, or combination of individuals that operates a business that employs or hires licensed therapeutic massage therapists to provide therapeutic massage within the City for a fee or other consideration.

Subd. 9. *Within the City*. A physical presence as well as mobile massage operations in which the establishment 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.

Section 447:03. License Required.

Subd. 1. Therapeutic Massage Establishment License. It shall be unlawful for any therapeutic massage establishment to operate, engage in, or carry on, within the City, massage services to the public for consideration without first having obtained a license from the City pursuant to this Section. The owner/operator of a therapeutic massage establishment 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.

Subd. 2. Massage Therapist License. It shall be unlawful for any massage therapist to practice, administer, or provide massage services to the public for consideration within the City without first having obtained a license from the City pursuant to this Section.

Section 447:04. Exceptions. A therapeutic massage establishment or therapist license is not required under this section for the following persons and places where massage services are provided by or under the direction of any of the following:

Subd. 1. Persons duly licensed or registered in this state to practice medicine, surgery, osteopath, chiropractic, physical therapy, podiatry or registered nurses.

Subd. 2. Persons duly licenses by this state as beauty culturists or barbers who do not give

or hold themselves out to give massages or other services other than those customarily given in such shops and places of business for beautification only. Massages customarily given by beauty culturists or barbers will be limited to the areas of head, neck and shoulder; hand and lower arms to the elbow; foot and ankle.

Subd. 3. Places duly licensed or operating as a hospital, clinic, nursing home, hospice, or group home established for the hospitalization or care of human beings provided the massage is administered only to the residents or patients of the facility as part of their care and not provided as part of a separate service.

Subd. 4. Athletic coaches, directors, and trainers employed by public or private schools.

Subd. 5. Accredited institutions and students of accredited institutions which provide an accredited program of study or course work in massage therapy, provided that the massage is provided during and as a part of the course or clinical component of the institution's program or course work and students are supervised by an instructor while performing the massage.

Subd. 6. Persons providing temporary massage services such as "chair massage" provided that all of the following requirements are met:

- (1) The massage is provided in a place of business where the massage can easily be seen by employees and visitors;
- (2) The establishment where the massage is being provided does not hold a license to sell alcoholic beverages;
- (3) Massages are offered at the establishment no more than ten days per calendar year;
- (4) Each recipient of a massage remains in an upright position during the massage, either in a seated or standing position; and
- (5) Each recipient of a massage remains fully clothed in the normal daytime attire worn when he or she enters the establishment and does not remove any clothing, except outerwear, such as a coat or jacket.

Section 447:05. License Application.

Subd. 1. Therapeutic massage establishment license application. An application for a therapeutic massage establishment license shall be made on a form supplied by the City and shall contain the following information:

A. Applicant and Owner Information.

- (1) Whether the applicant is an individual, corporation, partnership, or other form of organization.
- (2) Full name, address, date of place of birth, and telephone number of the applicant, all owners and operators, including the designated on-site manager or agent of the applicant.
- (3) Whether the applicant, owners and/or operators have 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. This includes commonly nicknames.

- (4) 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.
- (5) The type, name, location, and dates of every business or occupation the applicant has been engaged in during the preceding 10 years.
- (6) Whether the applicant is currently licensed in other communities to perform massage therapy, and if so, where.
- (7) Street addresses and dates at which the applicant has lived during the preceding 10 years.
- (8) Whether the applicant has ever been arrested, charged or convicted of any crime, or violation of any ordinance other than a minor traffic offense and, if so, the time, place, date(s) and offense for which arrests, charges or convictions were had.
- (9) If so, the applicant shall furnish information as to the date, time, place and offense for which arrests, charges or convictions were had.
- (10) Whether the applicant has ever been engaged in the operation of massage services. If so, applicant shall furnish information as to the name, place, dates and length of time of the involvement of all such establishments.
- (11) Whether the applicant or other owner has had an interest in, as an individual or as part of a corporation, partnership, association, establishment, business or firm, a massage license that was revoked, suspended, or denied within the last 10 years of the date the license application is submitted to the issuing authority.
- (12) Proof of Workers' Compensation Insurance as required by Minnesota Law.
- (13) Such other information as the City shall require.

B. Establishment information.

- (1) 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.
- (2) Plans and specifications showing the interior and exterior design of the establishment. Including space allocation and utilization, equipment layout, room finishes and specifications of all massage equipment.
- (3) The current status of the premises and establishment, including whether they are existing, planned, or under construction/renovation.
- (4) The floor number, street number, suite number(s) and rooms where the massage services are to be conducted.
- (5) 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.
- (6) Compatibility with St. Cloud Zoning Ordinances and the Comprehensive Plan and proximity to residences, other establishments licensed as therapeutic massage establishments, churches, schools, and public buildings.
- (7) Such other information as the City shall require.

Subd. 2. Massage Therapist License Application. An application for a massage therapist license shall be made on a form supplied by the City and shall contain 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 and dates 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 Police Chief, the police department may take photographs for the file.
- (6) Whether the applicant has ever been arrested, charged or convicted of any crime, or violation of any ordinance other than a minor traffic offense and, if so, the time, place, date(s) and offense for which arrests, charges or convictions were had.
- (7) Whether the applicant has had an interest in, as an individual or as part of a corporation, partnership, association, establishment, business or firm, a massage license that was denied, revoked or suspended within the last 10 years of the date the license application is submitted to the issuing authority.
- (8) The names, resident and business addresses and contact information 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 in this Section.
- (12) Whether the applicant has ever been the subject of an investigation, public or private, criminal or non-criminal, regarding massage therapy.
- (13) Such other information as the City shall require.

Subd. 3. Background Investigation. The applicant will submit with the completed application form an executed release of information authorizing the Chief of Police to obtain any information pertaining to the applicant's character or criminal history which may be deemed confidential, private, or privileged by the laws of the United States or of any state. The applicant will also submit additional information that may be required by the Planning Office, Health and Inspections Department, Police Chief and City Attorney. No person will make a false statement in an application.

Subd. 4. Insurance Required. Each applicant for a therapeutic massage establishment license shall file with the issuing authority a public liability insurance policy or certificate

of insurance from a company authorized to do business in the State of Minnesota, insuring the applicant against any and all loss arising out of the use, operation or maintenance of the therapeutic massage establishment. The policy of insurance shall be in limits of not less than \$1,000,000.00. Each applicant for a massage therapist license shall file with the issuing authority a current certificate of insurance providing coverage of \$1,000,000.00 for personal liability in the practice of massage. No cancellation of any insurance policy will be valid except upon 30 days prior written notice to the City. Failure to keep in full force and effect the insurance is grounds for suspension or revocation of the license.

Subd. 5. Review and Investigation Fee. At the time of each initial application, the applicant will pay in full a review and investigation fee. Review and investigation fees will be determined by the City Council and set forth in Section 512 of this Code. Where a new application is filed as a result of incorporation by an existing licensee and the ownership control and interest in the license are unchanged, no additional license fee will be required. The review and investigation fee will not be refunded.

Subd. 6. License Fee and License Year. The annual license fee for the therapeutic massage establishment and massage therapist license will be in the amount set forth in Section 512 of this Code. A separate license will be obtained for each place of business. Licenses are valid from January 1 to December 31 in the year the license is issued, unless revoked. Renewal application for the license must be made on or before December 1 prior to the next license term.

Subd. 7. Administrative Review. Upon the filing of an application for a license, together with the documents required to accompany the license, the Health Director will forward a copy of the application and accompanying documents to the Planning Office, Health and Inspections Department, Police Chief and City Attorney.

- (1) Planning Office Review. The Planning Office will review the application and any other pertinent information relative to zoning, land use compatibility, and comprehensive planning.
- (2) Police Department Review. The Police Chief will make or cause to be made a review of the application to determine the potential impact of law enforcement. The Police Chief will also make or cause to be made an investigation of the applicant's character and criminal history.
- (3) Health and Inspections Department. The Health and Inspections Department will review the license application and inspect the premises for which the license is to be issued to confirm compliance with all requirements of the City and State relating to health and sanitation.
- (4) City Attorney Review. The City Attorney will review the application for compliance with all applicable statutes and ordinances.
- (5) Findings and Approval. Within 45 days of receipt of the initial license application, the Planning Office, Police Chief, Health and Inspections Department and City Attorney will submit in writing to the Issuing Authority their respective findings and recommendations. The Issuing Authority will review the application, findings and recommendations and will approve or deny the application. Upon the filing of a renewal application, the City will respond within a reasonable period of time.

Section 447:06. Issuance of Licenses for New Construction and Alterations of Existing Structures.

Subd. 1. Final Plans Reviewed. Where a license to operate a therapeutic massage establishment is granted for premises on which new construction or alteration of existing structures is to occur, the applicant will submit a set of detailed final plans showing interior and exterior design, including site and space. These plans will be certified by a registered architect or engineer and submitted to the Building Inspections Division. The Issuing Authority will review the plans for compliance with the preliminary plans included in the application.

Subd. 2. Certificate of Occupancy Required. For premises on which new construction or alteration of existing structures is to occur, no license to operate a therapeutic massage establishment will be issued until a certificate of occupancy is issued by the City for premises constructed in accordance with the application and plans reviewed by the Issuing Authority. Prior to issuance of the certificate of occupancy, the Chief Building Official will certify to the Health Director that construction was or was not in compliance with the final plans reviewed by the Health Director. Where the construction is found not to be in accordance with the final plans, the Chief Building Official will state all significant deviations.

Subd. 3. Review of Deviations. Where the certification to the Health Director indicates that construction was not in accordance with the final plans, the Health Director will not issue the license but will return the application, together with the final plans and a statement of deviations.

Section 447:07. Persons Ineligible for Initial License.

- A. Therapeutic Massage Establishment License. The City may deny issuance of an initial therapeutic massage establishment license in any of the following circumstances, and this list is not intended to state the exclusive reasons for denial:
- (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, establishment, business or firm, a massage license that was denied, revoked or suspended within the last 10 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) The owner, operator, or any person who has a five percent financial interest in the business or the appointed on-site manager or agent applicant is not of good moral character or repute.
 - (6) Is not the real party in interest of the establishment.
 - (7) Has knowingly misrepresented or falsified information on a license application within the preceding 10 years.
 - (8) Cannot meet the definition of therapeutic massage establishment in this

Section.

- (9) The applicant does not have insurance coverage in effect as required by this Section.
- (10) The applicant has been denied a license under this Section within the preceding 12 months.
- (11) The proposed use is in conflict with the St. Cloud Zoning Code or the Comprehensive Plan.
- (12) The proposed use is in conflict with any health regulations or building code regulations of the City of St. Cloud or the State of Minnesota.
- (13) Owes taxes or assessments to the state, county, school district, or city that are due and delinquent.
- (14) Is the spouse of a person whose massage-related license has been denied, suspended or revoked in the past 10 years.
- (15) Allowed a license to expire or surrendered a license, unless, at the sole discretion of the city, a license application is submitted for consideration. The application shall be treated the same as an application for a new license, subject to all ordinance regulations and review.

B. Massage Therapist Licenses: The City may deny issuance of an initial massage therapist license in any of the following circumstances, this is not intended to state the exclusive reasons for denial:

- (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, establishment, business or firm, a massage license that was denied, revoked or suspended within the last 10 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 a license application within the preceding 10 years.
- (7) Is not affiliated with, employed by, or does not own a therapeutic massage establishment licensed by the city.
- (8) The applicant does not have insurance coverage in effect as required by this Section.
- (9) The applicant has been denied a license under this Section within the preceding 12 months.
- (10) Cannot meet the definition of massage therapist in this Section.

- (11) Allowed a license to expire or surrendered a license, unless, at the sole discretion of the city, a license application is submitted for consideration. The application shall be treated the same as an application for a new license, subject to all ordinance regulations and review.

Section 447:08. General License Restrictions.

- A. Prohibited Massages. A massage therapist must not intentionally massage or offer to massage the penis, scrotum, mons veneris, vulva, or vaginal area of a person.
- B. Coverings. When performing a massage, the massage therapist must require that the person who is receiving the massage have their breasts (with respect to females), buttocks, anus and genitals covered with clothing or a not-transparent material at all times. The massage therapist must have their breasts, buttocks, anus, and genitals covered with clothing at all times.
- C. License Restrictions. Each license will be issued to the applicant only. Each license will be issued only for the premises described in the application. No license may be transferred to another person or place.
- D. Business Hours. No customers or patrons will be allowed to enter the licensed premises after 10:00 p.m. and before 6:00 a.m. daily. Customers or patrons will not be allowed to remain upon the licensed premises after 10:30 p.m. and before 6:00 a.m. daily.

Section 447:09. Inspection by City Officers and Identification of Employees. Licensed premises and license applicants will be open to unannounced inspection by City Health, Building and License Inspectors and Police Officers during business hours. Inspected facilities will comply with following requirements:

- (1) Any person engaged in providing services in any licensed premises will identify themselves giving their true legal name and correct address upon demand by any police officer.
- (2) Current massage license issued by the City of St. Cloud must be displayed in the front entry or corridor of the facility.
- (3) Credentials of all massage therapists are current and available on-site.
- (4) Business hours must be posted on all public entryways into the massage facility.
- (5) Toilet rooms for employees and patrons are adequate and conveniently located.
- (6) Provide single-service disposable paper or clean linens to cover the table, chair, furniture, or area on which the patron receives the massage.
- (7) The massage therapist must wash their hands and arms with water and soap, anti-bacterial scrubs, alcohol, or other disinfectants prior to and following each massage service performed.
- (8) Massage tables, chairs, and other furniture on which massages are performed must have surfaces that can be readily disinfected after each massage. These surfaces must be disinfected following each massage performed. All modalities shall be performed on a raised massage therapy table or chair.
- (9) Rooms must be adequately illuminated, to allow for adequate cleaning

purposes.

- (10) The facility must be maintained in good repair and in a sanitary condition, and must take reasonable steps to prevent the spread of infections and communicable diseases on the premises.
- (11) Evidence of sexual acts is prohibited, such as semen found in the facility, massage tables, chairs, and other surfaces.
- (12) Massage therapists must be in good health, without skin infections, and wear clean clothing when performing massage services.
- (13) Facility must have an employee illness policy.
- (14) Massage establishments shall not contain nor allow the use by any person of sleeping quarters or living spaces of any kind intended for habitation, including but not limited to beds, cots, or mattresses. Sleeping or living quarters must be physically separated from the massage establishment.

Section 447:10. Advertising. Any advertising by a licensee or representative of the licensee of any potential unlawful, misleading, sexually explicit, obscene or erotic conduct at the licensed establishment shall be prohibited.

Section 447:11. Responsible for Conduct. A licensee under this Section 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.

Section 447:12. Non-renewal, Suspension, or Revocation of License. The license may be suspended, revoked or not renewed for any of the following reasons, and this list is not intended to state the exclusive reasons for suspension, revocation, or non-renewal:

- (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 ordinance or state law. The charging of a violation or conviction is not required for non-renewal, suspension, or revocation of a license.
- (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, 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 establishment 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) In the event of multiple massage establishment locations, any license suspension/revocation shall apply to all massage establishment locations within the City of St. Cloud.

Section 447:13. Appeal and Hearing Procedure. Before the City may revoke, suspend, deny or not renew a license, written notice must be sent to the applicant or owner/licensee setting forth the alleged grounds for the potential action. To appeal the revocation, suspension, denial or non-renewal, the applicant or owner/licensee must submit a request for appeal in writing within 10 days of receiving the notice. The appeal will be before an independent hearing officer selected from the list of independent hearing officers maintained by the City of St. Cloud. At the hearing, the applicant/licensee may speak on his or her behalf and may present witnesses and other evidence he or she deems necessary. Upon the conclusion of the hearing, the hearing officer, on behalf of the City Council, shall issue a written decision that includes findings of fact. The applicant/licensee may appeal the hearing officer's decision to the Minnesota Court of Appeals by writ of certiorari.

Section 447:14. Immediate Suspension of License. The Health Director or designee may immediately suspend a license, if the licensee, or any person working on behalf of the licensee, is determined to be conducting business in an unlawful manner, any manner that constitutes a substantial hazard to the health, safety, or general welfare of the public, or after repeated complaints received regarding unlawful conduct of the business practices or method of solicitation. The licensee will be given notice of the immediate suspension on site. The suspension will take place immediately. The licensee can request a hearing within 10 days of notice of the suspension and the hearing procedure will be the same as set forth in 447:13.

Section 447:15. Ability to Reapply After Revocation. The holder of a therapeutic massage establishment license or massage therapist license may not reapply for a new license for a period of 10 years if their license is revoked under this ordinance.