

TOWN OF DUNN

ORDINANCE #11-5

AN ORDINANCE REGULATING MASSAGE ESTABLISHMENTS

Section 1: Regulation of Massage Establishments, Massage Technicians and Employees

- (1) It shall be unlawful for any person, corporation or other legal entity to suffer, cause or permit the operation of a massage establishment or for a person to operate as a massage technician, agent, manager or employee, except in strict compliance with this ordinance.
- (2) DEFINITIONS. For the purposes of this section:
 - (a) "Massage" means any process of procedure consisting of rubbing, stroking, kneading or tapping, by physical or mechanical means, upon the external parts or tissues of the body of another for a consideration.
 - (b) Sexual or genital parts shall include the genitals, pubic area, buttocks, anus, or perineum of any person, or the vulva or breasts of a female.
 - (c) "Massage establishment" means a place of business wherein private massage is practiced, used or made available as a principal use of the premises.
 - (d) "Massage technician" means a person who practices, administers or uses massage for a consideration, who holds a valid license, under this section.
 - (e) "Patron" means any person who receives a massage under such circumstances that it is reasonably expected that he or she will pay money or give any consideration therefore.
 - (f) "Operator" means any person, association, firm, partnership or corporation licensed by the town to operate a massage establishment.
 - (g) "Manager" means the operator or an agent licensed under this section who shall not be licensed as a massage technician.
 - (h) "Waiting area" means an area adjacent to the main entrance that is separate from any area where massages are given.
 - (i) "Massage room" means the area where private massage is performed.
- (3) MASSAGE ESTABLISHMENT LICENSE.
 - (a) No person, corporation, or other legal entity shall suffer, cause or permit the conduct of a massage

establishment without having first obtained a license therefore from the Town Board. A separate license shall be acquired for each such establishment.

- (b) No license shall be granted for any establishment, the main entrance to which is within seventy-five (75) feet of the main entrance to a residence or of the common entry hall to residences, not for any room or rooms in any hotel or motel.
- (c) Applications shall be made in writing on forms supplied by the Town Clerk, If application is made for a location not previously license, the town Clerk shall, by regular mail, notify all property owners and registered electors within two hundred fifty (250) feet of the proposed location of at least ten (10) days before the hearing on the granting of such license.
- (d) All applications shall include:
 - 1. A non-refundable fee of One Hundred Fifty (\$150.00) Dollars;
 - 2. The location and mailing address of the proposed establishment;
 - 3. For an individual or for each person of a partnership or joint venture or agent of a corporation:
 - a. Name and present address;
 - b. The two immediately previous addresses, and dates of residence at each;
 - c. Height, weight, color of hair and eyes, Social Security number, written proof of age, full set of fingerprints and two photographs not less than thirty (30) days old, and at least 2" x 2";
 - d. The business or occupation for the two (2) years immediately preceding the date of application;
 - e. Whether a similar license had been revoked or suspended and, if so, the reason therefore and the location thereof;
 - f. Whether convicted of any crime or ordinance violation other than traffic offenses within the past three (3) years and, if so, a listing of the same and locations thereof;
 - 4. If the applicant is a corporation, the names and addresses of each officer and director and of the stockholders of such corporation, together with the extent of the ownership of each, and a statement whether such officer, director or stockholder holds office or stock in any other corporation conducting a similar business in the State of Wisconsin. Such application shall be made by an agent registered as such who shall have been a resident of the Town of Dunn for at least ninety (90) days;

5. All phone numbers of the proposed establishment;
 6. The names, addresses and phone numbers of all persons employed by the applicant at the proposed establishment at the time of application;
 7. Certification of compliance of the proposed premises with the Building Ordinance, or in the alternative, applicant shall file a bond assuring that any work required to be done to bring the premises into compliance therewith shall be accomplished prior to the opening of business. Compliance with such ordinance and with the standards contained herein for health and sanitary operation and the acquisition of a health permit shall be conditions precedent to the opening of business;
 8. The application shall contain a statement signed by the applicant and each individual of a partnership or joint venture that all the information contained therein is true and correct;
- (e) The issuance of this license shall allow for the licensing of up to three (3) additional managers for each establishment.
- (4) **MESSAGE TECHNICIAN'S AND MANAGER'S LICENSE.**
- (a) No person shall act or operate for a consideration as a massage technician or manager without having first obtained a permit to so do.
 - (b) Application for permits shall be in writing on forms supplied by the Town Clerk and shall include:
 1. A non-refundable fee of Fifty (\$50) Dollars;
 2. Applicant's full name and present address, Social Security number, written proof of age in excess of Eighteen (18) years, height, weight, color of hair and eyes, full set of fingerprints and two photographs not less than thirty (30) days old and at least 2" by 2";
 3. Applicant's two previous addresses and dates of residence at each;
 4. The applicant's business, occupation or employment during the two years immediately preceding date of application;
 5. Whether the applicant has had a similar permit revoked or suspended and, if so, the reason therefor and the location thereof;
 6. Whether the applicant has had a similar permit revoked or suspended and, if so, the reason therefor and the location thereof;
 7. For technicians only, a certificate from a licensed physician that the applicant has been examined and found to be free of communicable diseases and showing that such examination occurred less than thirty (30) days prior to the date of application;

8. The name and address of the licensed massage establishment by which the applicant is employed;
9. A statement signed by the applicant that all information contained therein is true and correct;

(5) GRANTING OF LICENSES.

- (a) Licenses may be granted by the Town Board after a hearing at which the applicant may be heard at applicant's option. At least ten (10) days' notice of such hearing shall be given to the applicant.
- (b) The Town Board shall grant a License within thirty (30) days of application unless it is shown, for a massage establishment License, that the operation as proposed by the applicant does not comply with all applicable State laws and town and county ordinances, and for all licenses that the applicant or any partner or any officer, director or stock holder of a corporate applicant has been convicted in a Court of competent jurisdiction of any offense under Ch. 944, Wis. Stats., or involving substances included in Sub. II of Ch. 161, Wis. Stats., or of an offense against the person or property of another within the past three (3) years, that the information required on the application is incomplete or that any applicant has knowingly or with the intent to deceive made any false, misleading or fraudulent statement of fact in the application or any other document required by the Town in conjunction therewith, or that the applicant has not resided in the Town for at least ninety (90) days prior to date of application.
- (c) In the event of denial, the applicant shall receive written notification thereof setting forth the reasons for the denial within ten (10) days after such denial;
- (d) Licenses granted by the Town Board shall expire one (1) year from the date of granting. Reapplication therefore shall be not less than sixty (60) days prior to such expiration date and shall be the sole responsibility of the applicant.
- (e) No License shall be transferred between locations or persons and no massage establishment license shall be sold or be subject to transfer of corporate assets or change of corporate officers or directors.
- (f) The Massage technician's License does not entitle the holder to operate or manage a massage establishment.

(6) REGULATIONS OF OPERATIONS AND LICENSES.

- (a) Each establishment shall at all times maintain and comply with the following regulations:
 1. General Regulations:
 - a. The establishment shall comply with all Town ordinances;
 - b. Only one non-flashing business sign clearly identifying the establishment as a massage

- establishment shall be posted at the main entrance. No description of services shall be permitted on such sign;
- c. No establishment shall be open for business between the hours of 10:00 P.M. and 8:00 A.M.;
 - d. Only massage technicians licensed pursuant to this section shall be employed as massage technicians by the establishment;
 - e. The practice of all massage technicians employed by the establishment shall be limited to the licensed premises;
 - f. No person under the age of eighteen (18) years shall be permitted on the premises;
 - g. No intoxicating beverages or substance included in Sub. II of Ch. 161, Wis. Stats., shall be permitted in the licensed establishment. Food shall be permitted only when there is no charge therefor and when a food preparation area, including sink with hot and cold running water, is a part of the establishment;
 - h. The establishment shall provide a waiting area for patrons separate from any area wherein massages are given. There shall be direct access to this area from the main entrance or from the hallway connected only to the main entrance;
 - i. The operator or a licensed manager shall be present on the premises at all times during hours of operation and shall be responsible for the operation of the establishment;
 - j. The establishment shall permit inspections of the premises at any time during business hours by Building Inspectors, Health Inspectors, or personnel of any law enforcement agency;
 - k. The establishment shall keep current records of the names and addresses of its massage technicians, agents, managers and employees and the date of employment and termination of each. Such records shall be open to inspection by any of the personnel listed in Paragraph j. above.;
 - l. The establishment shall report any change of fact required on the application form and all personnel changes to the Town clerk within ten (10) days after such change.
- (b) Each technician shall at all times comply with the following regulations:
1. The technician shall practice only on the premises of a licensed massage establishment;

2. The technician shall massage only patrons over the age of eighteen (18) years:
3. No technician shall administer a massage;
 - a. If said technician believes, knows, or should know that he or she is not free of any contagious or communicable disease or infection;
 - b. To any massage patron exhibiting any skin fungus, skin infection, skin inflammation or skin eruption;
4. The technician shall report any change of fact required in the application form to the Town clerk within ten (10) days after such change.
5.
 - a. It shall be unlawful for any person, in a massage parlor, to place his or her hand or hands upon, to touch with any part of his or her body, to fondle in any manner, or to massage, a sexual or genital part of any other person.
 - b. It shall be unlawful for any person, in a massage parlor, to expose his or her sexual or genital parts, or any portion thereof, to any other person. It shall also be unlawful for any person in a massage parlor, to expose the sexual or genital parts, or any portion thereof, of any other person.
 - c. It shall be unlawful for any person, while in the presence of any other person in a massage parlor, to fail to conceal with a fully opaque covering, the sexual or genital parts of his or her body.
 - d. It shall be unlawful for any person owning, operating or managing a massage parlor, knowingly to cause, allow or permit in or about such massage parlor, any agent, employee, or any other person under his control or supervision to perform such acts prohibited in subsections (a), (b), or (c) of this section.

(7) **REVOCAION OR SUSPENSION OF LICENSE.**

- (a) Grounds. The license granted herein may be revoked or suspended for up to six (6) months by the Town Board.
 1. If the applicant has made or recorded any statement required by this section knowing it to be false or fraudulent or intentionally deceptive;
 2. For the violation of any provision of this section, except for establishment license matters involving violations of Town ordinances, in which case the license shall be revoked after the second conviction thereof in any license year;
 3. If a technician's or manager's license, after one conviction of any offense under Chap. 944, Wis.

Stats., or of an offense involving substances included in Sub. II of Chap. 161, Wis. Stats., or of an offense against the person or property of a patron whether such occurred on or off the premises of the establishment;

4. If an establishment License, after one conviction of any establishment personnel of an offense under Ch. 944, Wis. Stats., or of an offense against the person or property of a patron or of an offense involving substances in Sub. II of Ch. 161, Wis. Stats., where there is shown the participation or knowledge of any other establishment personnel or of any individual within the business structure of the applicant;

(b) Notice and Hearing. No license shall be revoked or suspended by the Town Board except upon due notice and a hearing to determine whether grounds for such action exist. The notice shall be in writing and shall state the grounds of the Complaint against the licensee. The notice shall be served upon the licensee at least fifteen (15) days prior to the date of the hearing and shall state the time and place thereof. The licensee shall be entitled to be heard, to be represented, to cross-examine opposing witnesses, and to present witnesses in his or her own behalf under the subpoena of the Town Board, if such is required. The hearing shall be stenographically recorded and a copy of the transcript shall be available to the licensee at the expense of the licensee. The Town Board shall decide the matter and shall prepare a written decision which shall be filed with the Town Clerk and a copy thereof mailed to the licensee within twenty (20) days after the hearing.

(8) **EXCEPTIONS.** This section shall not apply to the following classes of individuals while engaged in the duties of their respective professions;

- (a) Physicians, surgeons, chiropractors, osteopaths, masseurs, or physical therapists licensed or registered to practice their respective professions under the laws of the State of Wisconsin, or nurses registered under the laws of the State of Wisconsin, acting under their direction and control.
- (b) Barber shops and beauty parlors, barbers and beauticians licensed under the laws of the State of Wisconsin, provided that such massage as is practiced is limited to the head and scalp.
- (c) Accredited high schools and colleges and coaches and trainers therein while acting within the scope of their employment.

(9) **OPERATION WITHOUT A LICENSE A PUBLIC NUISANCE.** The operation of a massage establishment without a license or the activity of an individual as a massage technician

without a license is deemed a public nuisance and may be enjoined by the Town.

(10) PENALTY. Any person violating this section shall be subject to a forfeiture of not less than One Hundred (\$100.00) Dollars nor more than Five Hundred (\$500.00) Dollars. Each day of violation shall constitute a separate offense.

(11) SEVERABILITY. The provisions of any part of this Ordinance are severable. If any provision or subsection hereof of the application thereof to any person or circumstances, is held invalid, the other provisions, subsections and applications of such ordinance to other persons or circumstances shall not be affected thereby. It is declared to be in the intent of this ordinance that the same would have been adopted had such invalid provisions, if any, not been included herein.