



Legislation Text

File #: 981046, Version: 0

981046
ORIGINAL

THE CHAIR

An ordinance relating to regulation of massage establishments.

75-21 rc

- Analysis -

1997 Wisconsin Act 156 establishes state registration and regulation of massage therapists and bodyworkers, and prohibits their further regulation by local governments. As recommended by the city attorney, this ordinance repeals all city regulations affecting massage therapists. The existing regulations require massage therapists to complete an approved course of study and procure a city license. The ordinance retains existing licensing requirements and regulations affecting massage establishments. The ordinance takes effect February 1, 1999, which is the effective date of 1997 Wisconsin Act 156.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 75-21 of the code is repealed and recreated to read:

75-21. Massage Establishment Regulation. 1. DEFINITIONS. In this section:

a. "Commissioner" means the commissioner of health or an authorized representative.

b. "Massage" means the manipulation of the soft tissue of the body for therapeutic purposes and may include but is not limited to effleurage, petrissage, tapotement, compression, vibration, friction, stroking or kneading, either by hand or with mechanical or electrical apparatus, for the purpose of body massage. This may include the use of oil, salt glows, hot and cold packs and other recognized forms of massage therapy. The term does not include diagnosis or any service or procedure for which a license to practice medicine is required by law.

c. "Massage establishment" means a place where the primary or secondary function is to offer massage.

2. MASSAGE ESTABLISHMENT. a. License Required. No person may carry on the business of operating a massage establishment without a valid license issued under this section for each place of business.

b. Content of Application. Any person desiring a license shall file a written application with the health department on a form provided by the department. The fee required in s. 60-58 shall accompany the application to defray the costs of administration and investigation. If the applicant is a corporation, the name of the corporation shall be set forth exactly as in its articles of incorporation, together with the names and addresses of each of its officers, directors and stockholders, and the application shall be verified by an officer of the corporation. If the applicant is a partnership, the application shall set forth the name and residence address of each of the partners, including limited partners, and the application shall be verified by each partner. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply to the corporate partner. If the applicant is neither a corporation nor a partnership, the application shall set forth the full name and address of the applicant and be verified by the applicant. The application shall set forth the proposed place of business and the facilities therefor, together with a detailed description of the nature and scope of the proposed business operation. In addition, the following information shall be furnished concerning the applicant if an individual, and concerning each individual stockholder, officer and director if the applicant is a corporation, and concerning each partner, including limited partners, if the applicant is a partnership:

b-1. The previous address, if any, for a period of 3 years immediately prior to the date of application and the dates for such address.

b-2. The date of birth.

b-3. Three one-inch by one-inch photographs taken within 6 months of the date of the application.

b-4. The business, occupation or employment history for 3 years immediately preceding the date of application, including, but not limited to, whether the person has previously operated under a permit or license in another city in this or another state or had such license suspended or revoked.

b-5. All convictions, including ordinance violations, exclusive of traffic violations, with a brief statement of the nature of the convictions and the jurisdiction in which the convictions occurred, subject to s. 111.335, Wis. Stats.

c. Investigation. Applications for licenses under this section shall be referred to the chief of police and commissioner of building inspection, who shall cause an investigation to be made and report their findings to the commissioner of health. Applicants shall cooperate with any investigation conducted under this section and permit access to the proposed place of business and facilities in conjunction with any

investigation.

d. Granting of Licenses. Within 60 days of the receipt of an application, the commissioner shall either grant or deny a massage establishment license. The commissioner shall grant an establishment license if the commissioner finds that:

d-1. The required fee has been paid.

d-2. The application conforms in all respects to the provisions of this section.

d-3. The applicant has not knowingly made a material misstatement in the application.

d-4. The applicant has fully cooperated in the investigation of the application.

d-5. The massage establishment as proposed by the applicant would comply with all applicable laws, including but not limited to the city's building, zoning and health regulations.

d-6. The applicant, if an individual, or any of the stockholders, officers or directors, if the applicant is a corporation, or any of the partners, including limited partners, if the applicant is a partnership, has not been convicted of any crime within 5 years prior to the date of the application, or is not subject to a pending criminal charge, subject to s. 111.335, Wis. Stats.

d-7. The applicant has not had a massage establishment license or other similar license or permit revoked for cause, with written explanation, in this or any other state within the 5 years prior to the date of application.

d-8. 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, is at least 18 years of age.

d-9. The applicant, if a corporation, is licensed to do business and in good standing in the state of Wisconsin.

d-10. The massage establishment as proposed by the applicant would comply with the requirements of this section.

3. INSURANCE. No person may carry on the business of operating a massage establishment at any place within the city without a premise and professional liability insurance.

4. MESSAGE ESTABLISHMENT FACILITIES. Every massage establishment shall maintain facilities meeting the following requirements:

a. Every massage establishment shall have a minimum of one washbasin.

b. The massage room shall have a minimum of 40 foot-candles of lighting for the purpose of observing possible contra-indications of massage.

c. Massage tables shall have a surface which is impervious to liquids and shall be furnished with linen, either disposable or washable, which are changed for each client.

d. Doors to rooms where massage is administered shall be unlocked during business hours.

e. For the purpose of ascertaining compliance with this section and conducting routine inspections, police officers, health inspectors and building inspectors shall have the right of entry onto the premises of any massage establishment during business hours.

5. SALE OR TRANSFER. Upon the sale or transfer of any interest in a massage establishment, the license shall be void. Any person desiring to continue to operate a massage establishment following sale or transfer shall apply under this section.

6. MESSAGE ESTABLISHMENT OPERATION. Massage establishments shall comply with the following operation requirements:

a. Massage establishments may not commence operations before 6 a.m. and the hours of operation may not extend later than 10 p.m. These hours shall pertain to on-site massages.

b. Massage establishments shall prominently and publicly display their licenses on the premises during all business hours.

c. Massage establishments shall at all times be equipped with an adequate supply of clean sanitary towels, coverings and linens and proper storage areas for such linens. Soiled linens and paper towels shall be deposited in receptacles.

d. Massage shall not be given unless a client's genitals are fully covered by linens or towels at all times. Female clients shall also have their breasts covered at all times.

7. PROHIBITED PRACTICES. No operator of a massage establishment may allow massages of the genital area of any patron or the breasts of any female patron.

8. SUSPENSION AND REVOCATION. a. Licenses may be suspended or revoked for cause and failure to comply with the requirements of this section.

b.No license may be suspended or revoked until after due notice and hearing before the commissioner to determine if grounds for revocation exist. Notice of the hearing shall be in writing and served at least 10 days prior to the date of hearing by personally serving the person in charge of the massage establishment and by posting upon the entrance to the massage establishment. The notice shall state the grounds of the complaint against the licensee and shall designate the time and place where the hearing will be held.

c.Any massage establishment license may be suspended for not more than 90 days or revoked by the commissioner for any violation of this section.

d.Written notice of revocation or suspension, together with the reasons therefor shall be given by the commissioner to the licensee at the massage establishment. The licensee may appeal the decision of the commissioner under s. 320-11.

9.EXEMPTIONS. This section does not apply to:

a.Physicians, surgeons, chiropractors, osteopaths or physical therapists licensed or registered to practice their respective professions under the laws of the state of Wisconsin.

b.Barbers and cosmetologists licensed under the laws of the state of Wisconsin provided that such massage 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.

d.Trainers of any amateur, semi-professional athlete or athletic team.

e.Organizations formed exclusively for the purpose of ballet performance and instruction which have received tax exempt status from the United States internal revenue service, upon the presentation of documentation of such status to the health department.

10.PENALTY. a. Any person violating this section shall be subject to a forfeiture specified under s. 61-15.

b.Citations may be issued for all violations of this section with or without prior notice. The stipulation, forfeiture and court procedure set forth in s. 50-25 shall apply.

Part 2. This ordinance is effective February 1, 1999.

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

Health Department

LRB98235.1

CW

8/31/98

Note: In Sections affected, a clerical correction was made to delete 60.58 rp.