

Please Note:

This draft of the proposed massage ordinance includes revisions as requested at the January 3, 2012, Urban and Economic Development Committee meeting.

(1) Revision is shown on page 6 - Section 1303 D, which reincorporates current ordinance language and replaces wording which raised questions as to the need for a student to be licensed while in training.

(2) Revision is also shown on page 9 - Section 1305 E, which includes alternative provisions treating past convictions for prostitution as either permanently disqualifying the applicant or requiring ten (10) years since the conviction date in order to qualify for the massage license. It is also noted that Mr. David Shapiro, Asst. City Prosecutor, researched this question and concluded that under current case law, permanent disqualification can be legally defended.

(3) Once the Council's choice is made regarding the extent of disqualification to be imposed by a past conviction for prostitution, similar change (to achieve consistency) will be needed on page 8 - Section 1305 A (10-12).

Ordinance Revision Schedule

First reading: Thursday, January 5, at 6:00pm

Committee discussion: Tuesday, January 10, at 10:00am

Possible action may be taken: Thursday, January 26, at 6:00pm

Please direct all questions, comments, and concerns to your City Councilor. You may locate your City Councilor and his/her email address at www.tulsacouncil.org.

(Published in the Tulsa Daily Commerce & Legal News,

_____, 2011.)

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 21, TULSA REVISED ORDINANCES, TITLED "LICENSES", RELATED TO AUTHORIZATION TO PURSUE AND EXERCISE A TRADE, OCCUPATION OR BUSINESS IN THE CITY OF TULSA; AMENDING CHAPTER 13, TITLED "MASSAGE BUSINESSES"; AMENDING SECTION 1301, DEFINITIONS BY ADDING TERMS AND DELETING TERMS TO COME INTO COMPLIANCE WITH THIS NEW ORDINANCE; AMENDING SECTION 1302, BY ADDING REQUIREMENTS TO OPERATE A MASSAGE ESTABLISHMENT AS RECOGNIZED BY THIS NEW ORDINANCE; AMENDING SECTION 1304, ADJUSTING FEES FOR THE LAWFUL SERVICES RECOGNIZED BY THIS ORDINANCE; AMENDING SECTION 1305, TO PROVIDE FOR MASSAGE ESTABLISHMENTS, AND ADDITIONAL QUALIFICATIONS; AMENDING SECTION 1306, ADJUSTING PROCEDURES FOR DENYING, SUSPENDING OR REVOKING A LICENSE; AMENDING SECTION 1309, AS TO THE REQUIREMENT TO DISPLAY THE LICENSE AND IDENTIFICATION CARD; AMENDING SECTION 1310, TO PROHIBIT THE TRANSFER, MISUSE AND ALTERATION OF THE LICENSE; AMENDING SECTION 1311, TO ADD MASSAGE ESTABLISHMENTS TO THE RECORD KEEPING REQUIREMENTS; AMENDING SECTION 1312, OPERATING REQUIREMENTS; ELIMINATING SECTION 1315, AND REPLACING IT WITH A NEW SECTION 1315, AND RENUMBERING SECTIONS 1316-1319 AS SECTIONS 1315-1318; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING THAT THE OPERATIVE DATE OF THIS ORDINANCE SHALL BE MARCH 1, 2012.

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BE IT ORDAINED BY THE CITY OF TULSA:

Section 1. That Title 21, Chapter 13, Tulsa Revised Ordinances, be and the same is hereby amended to read as follows:

"CHAPTER 13

MESSAGE BUSINESS

Section 1300.	Purpose.
Section 1301.	Definitions.

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- Section 1302. License.
- Section 1303. Exemptions From License Requirement.
- Section 1304. Fees and Renewal.
- Section 1305. Applications.
- Section 1306. License Denial, Issuance, Suspension, or Revocation--
Administrative Costs.
- Section 1307. Notice of Director's Action.
- Section 1308. Appeals.
- Section 1309. Identification Card.
- Section 1310. Transfer, Misuse or Alteration of License.
- Section 1311. Records to be Kept.
- Section 1312. Operating Requirements.
- Section 1313. Inspections.
- Section 1314. Enforcement.
- Section 1315. Bogus Checks.
- Section 1316. Licenses Currently Issued.
- Section 1317. Penalty.
- Section 1318. Remedies Cumulative.

SECTION 1300. PURPOSE

It is the purpose of this chapter to promote public health, safety, and welfare by providing for the regulation and control of persons engaged in the business of massage.
Ord. No. 20502

SECTION 1301. DEFINITIONS

As used in this chapter, the following words and phrases shall have the meanings given herein, unless otherwise expressly stated. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; words in the singular number include the plural number; and words defined in upper and lower case shall have the same meaning as words in all lower case. Words used in the masculine gender comprehend, as well, the feminine gender and neuter. The words "and" and "or" may be read conjunctively or disjunctively. The words "shall" and "will" are mandatory, and "may" is permissive.

Agent for the City of Tulsa shall mean any of the following: authorized employees of the Tulsa Police Department, Finance Department, Fire Department, Health Department, Legal Department, and Neighborhood Inspections – WIN Department.

Certification shall mean certification by the National Certification Board for Therapeutic Massage and Bodywork or a board of equivalent stature approved by the Director for Certifying Agencies for massage and bodywork, or other state or federal agencies as approved by the Director.

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City shall mean the City of Tulsa, Oklahoma, a municipal corporation.

Director shall mean the Director of Finance for the City of Tulsa or his authorized representative.

Direct Supervision shall mean on-the-premises control and responsibility for the Massage Apprentice by the supervisor in the physical presence of the massage.

Direct Supervisor shall mean the Massage Therapist or Massage Technician who signs the application for a Massage Apprentice and who performs the direct supervision of the apprentice as defined herein. A Direct Supervisor shall provide proof of twelve (12) consecutive months of actual business operations as a licensed Massage Therapist or Massage Technician as a prerequisite for sponsoring a Massage Apprentice.

Disqualifying Event shall mean the commission of any of the following criminal offenses under the laws of the City, any state, district or territory of the United States, or any foreign country, regardless of whether a conviction was the result, provided that the commission of the offense is proven to the Director upon a preponderance of the evidence: (1) Sexual offenses: prostitution, lewdness, soliciting prostitution or lewdness, transporting another for purposes of prostitution or lewdness, maintaining a house of prostitution, pandering or procurement for purposes of prostitution or lewdness, rape, sexual assault, sexual battery, forcible sodomy, sexual molestation, lewd or indecent proposals to a minor, possession of child pornography, indecent exposure, or any other sexual criminal offense of similar import; (2) Violent offenses: any assault, battery, assault and battery, robbery, homicide, kidnapping, domestic violence, stalking, or any other criminal offense of violence or the threat of violence of similar import; (3) Drug offenses: the unlawful manufacture, distribution, sale, purchase or possession of any controlled or dangerous substance or drug, uttering or possessing a forged, fictitious or altered prescription, or any other criminal offense of similar import involving controlled or dangerous substances or drugs.

Licensee shall mean any Massage Establishment, ~~Massage Establishment Operator~~, Massage Therapist, Massage Technician, or Massage Apprentice having a valid license issued by the City of Tulsa.

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Massage shall mean any method of pressure or friction applied by stroking, rubbing, kneading, tapping, pounding, manipulating, vibrating, or stimulating external parts of the human body with the hands, feet, or otherwise, with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment, or other preparation, infrared heat, vibrator, or mechanical or electrical appliance, for any type of consideration or gratuity as would be customary in such a business relationship.

Massage Establishment shall mean any fixed business location, address, building, or

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property where a person engages in, conducts, carries on, or permits to be engaged in the business of massage or arranges for outcall massage services.

Massage Apprentice shall mean any person who is required to be directly supervised by a Massage Therapist or a Massage Technician for the purpose of learning the method and practice of massage.

Massage Establishment Operator shall mean any person who owns, leases, manages or otherwise controls a massage establishment, or controls whether any massage apprentice(s), massage technician(s) or massage therapist(s) is allowed, permitted, selected, directed, employed, contracted for, or are leased or subleased space within a massage establishment; provided that a massage operator shall not include a totally independent and solo massage technician or massage therapist, without any contact or interaction with any massage apprentice, massage technician, massage therapist or massage operator.

Massage Technician shall mean any person, other than a Massage Therapist, who administers to another person a massage, electric or magnetic massage procedure, manipulation of the body, or other similar procedure allowed by law and is registered with a licensed massage establishment.

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Massage Therapist shall mean any person who is certified by the National Certification Board for Therapeutic Massage and Bodywork, or a board of equivalent stature which is accredited by the National Commission for Certifying Agencies for massage and bodywork and who administers to another person, a massage, electric or magnetic massage procedure, manipulation of the body or other similar procedure allowed by law and is registered with a licensed massage establishment.

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Outcall Massage Service shall mean a business service that engages in, conducts, carries on, or engages in massage at any location other than the location of a massage establishment.

Patron shall mean any person who presents himself for or receives a massage.

Person shall mean any natural person, firm, partnership, association, or corporation, limited liability company or other business entity.

Sexual Body Areas shall mean the female breast, and the genitals, pubic area, anus, or perineum of any person.

SECTION 1302. LICENSE

A. It shall be unlawful and an offense for any person to operate a massage establishment in the City without having first obtained a license to do so as herein provided.

B. It shall be unlawful and an offense for any person to perform or offer or agree to perform the services of a Massage Therapist, Massage Technician or Massage Apprentice without first having obtained a license to do so as herein provided.

C. It shall be unlawful and an offense for an operator of a massage establishment to permit any person in his/her massage establishment to act as a massage technician, massage therapist, or massage apprentice in the City unless such person is duly licensed as provided in this chapter.

D. It shall be unlawful and an offense for any ~~message establishment~~ operator to work out of such ~~establishment~~ who is not a duly licensed message ~~establishment~~ operator.

E. It shall be unlawful and an offense for any ~~message establishment~~ operator to permit any person to work out of such ~~establishment~~ who is not a duly licensed message technician, massage therapist, or massage apprentice as provided in this chapter regardless of where the massage is performed.

F. It shall be unlawful and an offense for any Massage Apprentice to perform a massage, unless acting under the direct supervision of a duly licensed Massage Therapist or Massage Technician.

G. It shall be unlawful and an offense for any Massage Therapist or Massage Technician to permit a Massage Apprentice to perform a massage unless acting under the direct supervision of a duly licensed Massage Therapist or Massage Technician.

Ord. No. 20502

SECTION 1303. EXEMPTIONS FROM LICENSE REQUIREMENT

This chapter shall not apply to the following persons while engaged in the personal performance of the duties of their respective professions:

A. Nurses, physician assistants, nurse practitioners, and certified nursing assistants who are registered under the laws of the state of Oklahoma;

B. Physicians, surgeons, chiropractors, chiropodists, podiatrists, osteopaths, physical therapists or athletic trainers who are duly licensed to practice their respective professions in the state of Oklahoma;

C. Barbers, cosmetologists, estheticians, facialists, and manicurists who are duly

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licensed under the laws of the state of Oklahoma, except that this exemption shall apply solely to the massaging of the neck, face, scalp, and hair of a patron for cosmetic purposes in the case of barbers, cosmetologists, estheticians, and facialists; or in the case of manicurists, the extremities, as part of a proper pedicure or manicure; or

D. Any employee or student of any nonprofit organization such as a hospital, clinic, nursing and convalescent home, university, college or seminary licensed or accredited by the state of Oklahoma or organized as exempt from taxation by the Internal Revenue Code of the United States, when massages are performed as part of such service or education and not for any consideration. Ord. No. 20502

SECTION 1304. FEES AND RENEWAL

A. Applications for a license as a Massage Therapist, Massage Technician, or Massage Apprentice shall be accompanied by a nonrefundable processing fee of Fifteen Dollars (\$15.00) per person. In addition, every application shall be accompanied by a Nineteen Dollar (\$19.00) fingerprint fee, assessed to defray the cost of processing and investigation.

B. The following annual license fees shall be due and payable by the applicant at the time the City license is issued; provided, however, that fees for the initial applications for Massage Therapists and Massage Technicians may be prorated quarterly.

1.	Massage Establishment	\$ 200.00
2.	Massage Establishment Operator	\$ 75.00
3.	Massage Therapist	\$ 75.00
4.	Massage Technician	\$ 75.00
5.	Massage Therapist / Outcall (not affiliated with a massage establishment)	\$ 150.00
6.	Massage Technician/Outcall (not affiliated with a massage establishment)	\$ 150.00
7.	Massage Apprentice	\$ 135.00

C. Each licensee, except a Massage Apprentice, shall reapply for a license annually and the license shall be renewed, unless the Director determines that the licensee should be denied a license for a violation of the provisions of this chapter. Massage Apprentice licenses are eligible for one (1) twelve (12) month renewal.

D. A license shall expire on September 30 of each year, except for a Massage Apprentice license, which shall expire one (1) year from date of issuance. Applications for renewal of the license shall be submitted, along with the appropriate annual license fee, thirty (30) days prior to the date of expiration. Any license which has not been renewed within ninety (90) days following its

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Comment [J1]: SWITCHED TEXT: Hospitals, clinics, nursing and convalescent homes, and other similar institutions dedicated to medical or nursing practices, licensed under the laws of this state, where massage and baths may be given to their patients. Employees and contractors of the respective institutions shall be exempt from this article while in the normal course of their employment within the institution.

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expiration shall not be renewed, and the licensee shall be required to apply for a new license.

E. In the event that the licensee shall cease operation, either voluntarily or involuntarily, before the end of the period for which a license is issued, no part of the license fee shall be refunded. *Ord. Nos. 16228, 16546, 20502*

SECTION 1305. APPLICATIONS

A. **Massage Establishments.** Any applicant and manager for a license for a massage establishment shall submit to the Director a written application on a form furnished by the Director. Before issuing a license, the Director shall determine that the following requirements are met by each applicant, owner, operator, manager, or partner.

1. An applicant for a massage related license shall submit to the Director, a written and verified application on a form furnished by the Director. Before issuing a license, the Director shall determine that the applicant meets the following requirements:

2. The applicant or members of the applying firm, partnership or association or if a corporation, the manager, ("Applicant" herein) shall be eighteen (18) years of age or older. The applicant's name, place of birth, sex, race, height, weight, color of eyes and hair, residence, and permanent business address shall be included in the application. The applicant shall specify the exact name and address of the proposed massage establishment.

3. The applicant shall furnish massage or similar business license history disclosing whether the applicant in previously operating under license in this or another city or state has had his license revoked or suspended, and if so, the reason therefore, and business activity or occupation of the applicant subsequent to such suspension or revocation.

4. If the applicant is a corporation, the application shall include the state of incorporation, the name and address of the corporation, the registered service agent in the State of Oklahoma, the date authorized to do business in Oklahoma, and the names and addresses of the officers and directors of the corporation.

5. That the applicant has secured a location in the City of Tulsa which is described by address and name for the massage establishment, and if leased, a copy of the lease agreement.

6. The applicant shall submit a Certificate of Use and Occupancy from the City of Tulsa valid for a massage establishment.

7. The applicant who is or intends to be a massage establishment operator engaged in massage related duties must be licensed as a massage therapist, technician or operator.

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8. **Photograph.** An applicant shall be photographed at the time of application, one copy of the photograph shall be used for a City-furnished identification card, and another copy shall be retained by the Department of Finance,

9. **Fingerprints:** the applicant shall be fingerprinted on all fingers on form acceptable to the Oklahoma Bureau of Investigation, at the time of application, which fingerprints shall be retained for as long as deemed necessary by the Director. The Director may verify identification of any applicant by appropriate means.

10. **Disclosure of Prior Revocations and Criminal History.** The applicant shall disclose all prior revocations or suspensions of a massage-related license and all convictions of any and all misdemeanors and/or felonies, including traffic-related violations, from any jurisdiction within ten (10) years preceding the date of the application. Failure to fully disclose this information may result in revocation of any license issued under this chapter.

11. **Disqualification** is automatic for a misdemeanor conviction for prostitution; or a prostitution-related crime; public lewdness; any sexual offense; an act of violence such as or similar to assault and battery, stalking, domestic violence, or any other act or threat of violence for which a protective order was issued; or any drug-related crime within five (5) years preceding the date of the application.

12. **Disqualification** is automatic for any felony conviction within ten (10) years preceding the date of the application.

13. **Revocation of a massage-related license** by this or any other jurisdiction within three (3) years preceding the date of the application may disqualify the applicant.

14. The applicant shall furnish other information and identification, as the Director shall require, in order to verify the criteria herein specified.

B. Therapist, Technician and Apprentice. The applicant shall be eighteen (18) years of age or older. The applicant's name, place of birth, sex, race, height, weight, color of eyes and hair, residence, and permanent business address shall be included in the application.

C. Photograph. An applicant shall be photographed at the time of application, one copy of the photograph shall be used for a City-furnished identification card, and another copy shall be retained by the Department of Finance.

D. Fingerprints. The applicant shall furnish a certified set of fingerprints on all fingers on a form purchased from the Tulsa County Sheriff's Office, at the time of application, which fingerprints shall be retained for as long as deemed necessary by the Director. The Director may verify identification of any applicant by appropriate means.

E. **Disclosure of Prior Revocations and Criminal History.** The applicant shall disclose all prior revocations or suspensions of a massage-related license and all convictions of any and all misdemeanors and/or felonies from any jurisdiction within ten (10) years preceding the date of the application. Failure to fully disclose this information may result in revocation of any license issued under this chapter.

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*1. Disqualification is automatic if the applicant has ever been convicted of the crime of prostitution or a prostitution-related crime, whether a misdemeanor or a felony.

1. Disqualification is automatic if the applicant has been convicted of the crime of prostitution or a prostitution-related crime, whether a misdemeanor or a felony, unless ten (10) years have lapsed since the date of conviction.

1. Disqualification is automatic if the applicant is not a legal resident of the United States and the State of Oklahoma or, if an alien, the applicant shall submit documentation that he is legally residing in the United States and is authorized to engage in employment.

2. Disqualification is automatic if the applicant has been convicted of a misdemeanor involving public lewdness, a sexual offense other than prostitution or a prostitution-related offense, assault and battery, domestic violence, or any other act or threat of violence for which a final protective order was issued, or a controlled-substance-related offense, within the preceding five (5) years.

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3. Disqualification is automatic if the applicant has been convicted of any other felony unless ten (10) years have elapsed since the date of conviction or five (5) years have elapsed since the release from confinement, whichever is the later date.

4. Revocation of a massage-related license by this or any other jurisdiction within three (3) years preceding the date of the application may disqualify the applicant.

5. The applicant shall furnish other information and identification as the Director shall require in order to verify the criteria herein specified.

F. **Qualifications and Requirements.** An applicant for a license as a Massage Therapist, Massage Technician, or Massage Technician with restrictions, Massage Establishment Operator, or Massage Apprentice shall meet the following qualifications and requirements:

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* Mr. David Shapiro, Assistant City Prosecutor, has researched this provision and concludes that under current case law, it should withstand legal challenge.

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1. **Massage Therapist:**

- a. The applicant shall possess a current, valid accreditation from the National Certification Board for Therapeutic Massage and Bodywork; or
- b. The applicant shall possess a current City of Tulsa Massage Technician license and submit proof of an additional two hundred fifty (250) hours of training from course(s) approved by the National Certification Board for Therapeutic Massage and Bodywork, or courses approved by the Director; or
- c. The applicant shall submit proof of completion of five hundred (500) massage-related education hours which are certified by a board equivalent in stature to the National Certification Board for Therapeutic Massage and Bodywork, or which are approved by the Director.

2. **Massage Technician:**

- a. The applicant shall submit documentation evidencing successful completion of a school or institution of learning approved by the Director, wherein the method, profession, and art of massage is taught; or
- b. If the applicant does not possess the requirement provided in paragraph a, above, the applicant shall:
 - (1) Submit a completed logbook, supplied by the Director, and accompanied by an Affidavit from the applicant's Direct Supervisor, which documents the completion by the applicant of two hundred fifty (250) hours of directly supervised massage. Falsification of hours of supervision may result in revocation of the license of the Direct Supervisor, as well as denial of the application; and
 - (2) Submit documentation evidencing successful completion of a course of at least three (3) semester hours of applied anatomy and physiology at any institution of higher learning, accredited by the state wherein such institution is located, or as otherwise approved by the Director.

3. **Massage Technician (with restrictions).**

- a. The applicant shall submit documentation evidencing extensive experience in the field or completion of a school or institution of learning approved by the

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Director, wherein the method, profession, and art of massage has been successfully practiced or learned; and

b. Massage Technicians licensed under this paragraph are subject to the following provisions, limitations, and restrictions:

(1) The massage shall be restricted to hands, wrists, ankles, and feet, only; and

(2) The patron shall remain fully clothed, excepting footwear; and

(3) Equipment, such as a couch or chair, a hand-held device, or movable padding, which contains a vibratory feature may also be used contemporaneously with the massage of the extremities listed in paragraph (1).

4. Massage Establishment Operator:

a. The applicant shall submit proof of ownership of the massage establishment or proof that he or she will be working in a licensed massage establishment in the capacity of an operator as defined in this Chapter.

5. Massage Apprentice:

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a. The applicant shall submit documentation evidencing successful completion of training in contra-indicators of massage, as approved by the Director; and

b. Each application for a Massage Apprentice license shall be signed by and shall disclose the name and City license number of the Massage Therapist or Massage Technician who shall act as the applicant's Direct Supervisor, as defined herein.

SECTION 1306. LICENSE DENIAL, ISSUANCE, SUSPENSION, OR REVOCATION--ADMINISTRATIVE COSTS

The Director shall review applications, conduct hearings, and make the determinations required for the proper and efficient enforcement of the requirements of this chapter. The requirements of this chapter for each license are cumulative, and the failure of the licensee to comply with any requirement shall be grounds for denial, suspension, or revocation of such license.

A. **Issuance.** The Director shall review and act upon each application within a reasonable time after its completion and submission. The Director shall issue each and every applicant who satisfactorily complies with the license requirements of this chapter the appropriate

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license.

B. **Identification Card.** The Director shall issue to each person licensed under this chapter a City-furnished photo identification card.

C. **Suspension.** The Director may suspend a license for a definite period, not to exceed sixty (60) days, if he determines that the licensee has:

1. Interfered with the Director or other enforcement personnel in the performance of his duties; or
2. Intentionally or knowingly failed to comply with any of the provisions of this chapter.

D. **Revocation.** The Director may revoke a license if:

1. The licensee has been convicted of a felony, unless ten (10) years shall have elapsed from either the date of conviction or the release from confinement for a felony conviction; or
2. The licensee has ever been convicted of any of the following: prostitution or a prostitution-related act; public lewdness; any sexual offense; any act of violence such as assault and battery, stalking, domestic violence, had a protective order or similar judicial writ issued against him (civil or criminal); and/or any drug-related crime which was not disclosed as required in the application.
3. The licensee made a misstatement in the application which would have been grounds for the denial thereof;
4. The licensee has had his license previously suspended and a subsequent cause for suspension occurs within twelve (12) months following said suspension;
5. The licensee fails to meet the requirements of Section 1305.

E. **Administrative Costs.** Any determination by the Director that licensee has intentionally or knowingly failed to comply with any of the provisions of this chapter shall include the requirement that the licensee pay a sum not to exceed FIVE HUNDRED DOLLARS (\$500.00) to reimburse the City for its actual administrative costs associated with the determination process.

F. **Administrative Hearing.** Any state or City authority, board, department, or agency shall have the right to request an administrative hearing before the Director in response to complaints against any licensee for any violation of this chapter. The procedure shall comply with all pertinent provisions of this chapter.

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G. **Surrender of License.** After receipt of notice of suspension or revocation, the licensee shall, on or before the date specified in the notice, surrender his Massage Establishment, Massage Therapist, Massage Technician, or Massage Apprentice license to the Director and discontinue performing massage service.

H. **New Application.** After revocation of a license, a licensee shall not be eligible to make application for a license for a period of three (3) years, and subsequent applications shall be made in accordance with Section 1305 of this chapter.

Ord. Nos. 16228, 20502

SECTION 1307. NOTICE OF DENIAL, SUSPENSION, OR REVOCATION

The Director shall give notice of denial of license to the applicant by certified mail, return receipt requested, to his stated home address, or of suspension or revocation of license to any licensee by certified mail, return receipt requested, to his stated business address. Such notice shall state the reasons for denial, suspension, or revocation; the effective date of the decision; and shall advise the applicant or licensee that the Director's decision may be appealed to the Council by filing a written notice of appeal with both the Council Secretary and the Director within ten (10) working days from the date of the Director's decision. The notice filed by the applicant/licensee shall specify the grounds for the appeal. All such licenses shall be suspended pending appeal.

Ord. No. 20502

SECTION 1308. APPEALS

Appeals to the Council from any adverse decision of the Director, when timely and properly filed, shall be heard by the Council not less than seven (7) days nor more than thirty (30) days from the date the notice of appeal is received by the Council Secretary. Notice of the date and time of the hearing before the Council shall be given to all parties concerned. At such hearing the Council shall receive any evidence it deems appropriate and shall either affirm, reverse, or modify the Director's decision.

Ord. No. 20502

SECTION 1309. DISPLAY OF LICENSE AND IDENTIFICATION CARD

A. Every massage establishment shall display, in a well-lighted area on the wall near the front entrance or at another prominent location at the licensed address, the City license authorizing the operation of such business. In addition, the owner, operator, or manager of each massage establishment shall maintain copies of each of the City massage licenses issued to every therapist, technician, and apprentice working at the establishment and display same at the request of any agent for the City.

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B. Each individual approved by the Director and licensed by the City as the owner, operator, partner, or manager of a massage establishment or outcall massage service, or as a

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Massage Therapist, Massage Technician, or Massage Apprentice shall have on their person, at all times when engaged in the licensed business or when upon the licensed premises during authorized hours of operation, the City Identification Card issued to such individual.

C. Failure to comply with this Section shall be unlawful and a misdemeanor offense punishable by a fine not to exceed FIVE HUNDRED DOLLARS (\$500.00) excluding costs, fees and assessments. Each day of such violation shall constitute a separate offense.

SECTION 1310. TRANSFER, MISUSE OR ALTERATION OF LICENSE

A. All licenses are nontransferable.

B. No person shall alter, change, lend or transfer any license.

C. No person shall use or borrow a license which has not been issued to that person by the Director.

D. Failure to comply with this Section shall be unlawful and a misdemeanor offense punishable by a fine not to exceed FIVE HUNDRED DOLLARS (\$500.00) excluding costs, fees and assessments. Each day of such violation shall constitute a separate offense.

SECTION 1311. RECORDS TO BE KEPT

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A. The owner, operator, or manager of each massage establishment shall maintain a current record of all persons performing massages in their establishment, including their address, date of birth, sex, duties, and such other information as the Director may reasonably require.

B. The owner, operator, or manager of each massage establishment shall maintain a current record of all treatments rendered, which record shall include the Therapist, Technician, or Apprentice, the name and address of the patron, and the date of such treatment. Such records shall be maintained for a period of not less than one (1) year.

C. Every Massage Establishment shall maintain all consent forms or physicians' prescriptions for patrons under eighteen (18) years of age for a period of three (3) years from the date of last treatment.

D. The records required by this section shall be maintained in a confidential manner by the establishment and provided only to an agent of the City of Tulsa, or as otherwise authorized by the patron. It shall be unlawful and an offense, punishable by a fine of not more than TWELVE HUNDRED DOLLARS (\$1,200.00) excluding costs, fees and assessments, or by imprisonment in the City Jail for not more than ninety (90) days, or by both such fine and imprisonment and cause for suspension or revocation of any license issued under this chapter, for any person or licensee to

refuse to provide to said agent such records. Each day of such violation shall constitute a separate offense.

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SECTION 1312. OPERATING REQUIREMENTS

A. The following operating requirements shall apply to Massage Establishments, Massage Therapists, Massage Technicians and Massage Apprentices alike. A violation of any of the following requirements shall be unlawful and an offense. Any violation shall be cause for suspension or revocation of the subject license and if suspended or revoked shall subject the licensee to the requirement to reimburse the City an amount not to exceed FIVE HUNDRED DOLLARS (\$500.00) to apply toward the actual costs of the administrative hearing. Each day of such violation shall constitute a separate offense.

1. Every portion of the massage establishment, including appliances and apparatus, shall be kept clean, in good repair and shall be operated in a sanitary manner.

2. A price schedule for all services shall be either prominently posted in the reception area in a location visible to all prospective patrons or be otherwise available in printed form.

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3. All employees, persons, and managers, owners, operators, technicians, therapists, and apprentices shall be clean and shall wear clean nontransparent outer garments, covering the sexual body areas.

Deleted: A separate dressing room for each sex shall be available on the premises with individual lockers for each employee, technician, or therapist. Doors to such dressing rooms shall open inward and shall be self closing.

4. All massage establishments shall be provided with a sufficient quantity of clean sheets and towels which shall be laundered after each use and shall be stored in a sanitary manner. All soiled linens, towels, and other materials shall be kept in properly covered containers or cabinets, which shall be kept separate from the storage areas for clean supplies.

5. No patron shall receive the services of any massage establishment technician or therapist, unless such patron is at least eighteen (18) years of age without the permission of a parent or legal guardian.

6. No Massage Therapist, Technician or Apprentice while engaged in the activity for which he is licensed, shall sell, give, dispense, consume, provide or keep or cause to be sold, given, dispensed, provided or kept any controlled drug, alcoholic beverage or beer.

Deleted: No person shall sell, give, dispense, consume, provide or keep, or cause to be sold, given, dispensed, provided, or kept any alcoholic beverage, or beer, or low point beer on the premises of any massage establishment.

7. No person may act as manager for a corporate licensee, unless such person has been approved by the Director and listed on the license of the massage establishment.

8. No technician, therapist, apprentice, owner, operator, partner, manager, patron, or person shall do or permit to be done the massage or touching or the offer or agreement to massage or touch any person's sexual body areas, including his own.

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9. No technician, therapist, apprentice, owner, operator, partner, manager, patron or person shall do or permit to be done the exposing, or the offer or agreement to expose to the view of any other person, his or her sexual body areas or the sexual body areas of any other person.

10. Acts of prostitution, lewdness, or related unlawful or improper sexual behavior shall not be performed or permitted by any licensee. The possession by a licensee of any sexual paraphernalia such as but not limited to condoms, vaginal lubricants, adult toy devices designed for sexual gratification, or the like, while performing a massage shall constitute a rebuttable presumption of improper sexual behavior.

11. All massages shall be performed in a massage room designed for such purpose. No doorway to such room shall be fitted with a door capable of being locked.

12. No patron who is affected with any contagious disease or with any disease of the skin shall be massaged in any massage establishment.

13. No person holding a massage establishment license, Massage Therapist, Massage Technician, or Massage Apprentice shall operate under a name not specified in the license.

14. Each advertisement for one licensed pursuant to this chapter shall include both the assigned license number and the type of license held by each licensee in the ad.

15. No Massage Establishment, Massage Therapist, Massage Technician, or Massage Apprentice shall place, publish or distribute, or cause to be placed, published or distributed, any advertisement, picture, or statement which is known or through the exercise of reasonable care should be known to be false, deceptive, or misleading.

16. No Massage Therapist or Massage Technician shall be designated as the Direct Supervisor for more than two (2) Massage Apprentices at any one time.

17. No licensee, patron, or any other person shall be intoxicated while upon the premises of a massage establishment.

18. All instruments, apparatus, equipment, or appliances of a non-disposable nature shall be disinfected after each use.

19. Wet and dry heat rooms, steam or vapor rooms, or steam or vapor cabinets, shower compartments, and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs and massage tables shall be thoroughly cleaned and disinfected after each patron's use.

20. Each patron and massage table shall be provided with clean and sanitary linens,

sheets, and towels.

21. Hot and cold running water shall be provided at all times.

22. Minimum lighting, direct or indirect, of not less than forty (40) footcandles shall be provided and shall be in use when massage services are being performed.

~~23.~~ Any person, patron, licensee or individual found guilty of violating any provision of this Section shall be guilty of a misdemeanor and shall be punished by a fine of not more than FIVE HUNDRED DOLLARS (\$500.00), excluding costs, fees and assessments.

B. **Specific Requirements.** The following operating requirements shall apply to any owner, operator, manager, or partner of a Massage Establishment, Massage Therapists, Massage Technicians, and Massage Apprentices alike. A violation of any of the following requirements shall be unlawful and an offense. Any violation may be cause for suspension or revocation of the subject license and shall subject the licensee to the requirement to reimburse the City an amount not to exceed FIVE HUNDRED DOLLARS (\$500.00) to apply toward the actual costs of the administrative hearing. Each day of such violation shall constitute a separate offense.

1. **Massage Therapists:**

a. All Massage Therapists who are required to provide evidence of certification shall maintain current certification as a condition of continued licensing.

b. All Massage Therapists shall, on an ongoing basis, complete the minimum continuing education requirements that would be necessary to maintain certification from either the National Certification Board for Therapeutic Massage and Bodywork or a board of equivalent stature which is accredited by the National Commission for Certifying Agencies for massage and bodywork, or comply with the Director's requirements for continuing education. Continuing education is meant to include college credit and/or noncollege credit hours in massage-related education. Each class hour attended of a college credit course shall count toward the total number of "in-class" hours the licensee is required to attend in order to maintain board certification.

2. **Massage Apprentices:**

a. Every Massage Apprentice shall work at all times under the direct supervision of a licensed Massage Therapist or Massage Technician.

b. No Massage Apprentice shall work more than six (6) hours in any one (1) day and no more than thirty (30) hours in any one (1) week. A week is defined for these

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purposes as a period of seven (7) days running Sunday through Saturday.

Ord. No. 20502

SECTION 1313. INSPECTIONS

Any licensee shall be subject to inspection at any reasonable time while licensed by any authorized agent of the City of Tulsa to determine compliance with the provisions of this chapter. It shall be unlawful and an offense and cause for suspension or revocation of the subject license for any person or licensee to refuse to allow such inspections.

Ord. No. 20502

SECTION 1314. ENFORCEMENT

Any applicant who has been denied a license, or any licensee whose license has been revoked or suspended hereunder who acts in violation of such denial, revocation, or suspension shall be guilty of a misdemeanor offense, and each day of such violation constitutes a separate offense.

Ord. No. 20502

SECTION 1315. BOGUS CHECKS

The license of any applicant or licensee who pays any fee with a check which is subsequently dishonored for any reason shall be automatically suspended without further notice until payment satisfactory to the Director is made. This provision shall not prevent the filing of criminal charges.

Ord. No. 20502

SECTION 1316. LICENSES CURRENTLY ISSUED

A. Each Massage Technician currently licensed by the City on the date of passage of this ordinance shall continue to be licensed until expiration of the current license, and shall comply with all requirements of this chapter.

B. All new applications, including existing licenses which are not renewed, for Massage Therapists, Massage Technicians, Massage Technician with Restriction, and Massage Apprentice shall be in compliance with the terms and requirements of this chapter.

Ord. No. 20502

SECTION 1317. PENALTY

Any person, patron, licensee, or individual found guilty of violating any provision of this chapter for which a penalty is not otherwise provided, shall be guilty of a misdemeanor and shall be punished by a fine of not more than ONE THOUSAND TWO HUNDRED DOLLARS (1,200.00) excluding costs, fees and assessments, and/or by imprisonment in the City Jail for not more than ninety (90) days or by both such fine and imprisonment. Each day of such violation shall constitute a separate offense.

Ord. No. 20502

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SECTION 1318. REMEDIES CUMULATIVE

The conviction and punishment of any person for operating hereunder without the appropriate license shall not relieve such person from paying any appropriate license fee due, nor shall conviction and punishment prevent the Director from denying the issuance of any license, nor shall the payment of any license fee prevent a criminal prosecution for the violation of any of the provisions of this chapter. The conviction and punishment of any person for violating any of the operating requirements herein shall not prevent the Director from suspending or revoking any existing license for such violation, nor shall the suspending or revoking of the license prevent a criminal prosecution for the violation of any of the provisions of this chapter. The Director shall take appropriate action when evidence of a violation of this chapter is presented, whether or not criminal prosecution occurs. All remedies prescribed hereunder shall be cumulative, and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter."

Ord. No. 20502

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Section 3. SEVERABILITY CLAUSE. If any section, sentence, clause or phrase of this ordinance or any part thereof is for any reason found to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance or any part thereof.

Section 4. REPEAL OF CONFLICTING ORDINANCES. That all ordinances or parts of ordinances in conflict herewith be and the same are now expressly repealed.

Section 5. OPERATIVE CLAUSE. Following passage of this ordinance by the City Council; approval by the Mayor; and publication, this ordinance shall be operative on and after March 1, 2012.

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Deleted: That an emergency is now declared to exist for the preservation of the public peace, health and safety, by reason whereof this ordinance shall take effect immediately from and after its passage, approval and publication.

ADOPTED by the Council: _____
Date

Chairman of the Council

ADOPTED as an emergency measure: _____
Date

Chairman of the Council

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OFFICE OF THE MAYOR

Received by the Mayor: _____, at _____.
Date Time

Dewey F. Bartlett Jr., Mayor

By _____
Secretary

APPROVED by the Mayor of the City of Tulsa, Oklahoma: _____,
Date

at _____.
Time

Mayor

(Seal)
ATTEST:

City Clerk

APPROVED:

City Attorney