

CITY OF LAKE ELMO
COUNTY OF WASHINGTON
STATE OF MINNESOTA

ORDINANCE NO. 2012-064

AN ORDINANCE AMENDING THE LAKE ELMO CITY CODE OF ORDINANCES BY CHANGING THERAPEUTIC MASSAGE FROM A CONDITIONAL TO A PERMITTED USE IN THE GENERAL BUSINESS ZONING DISTRICT AND ADDING NEW REGULATIONS RELATED TO THE PRACTICE OF THERAPEUTIC MASSAGE IN THE CITY OF LAKE ELMO.

SECTION 1. The City Council of the City of Lake Elmo hereby amends Title XV: Land Usage; Chapter 154: Zoning Code, by removing the following language:

§154.051 GB - GENERAL BUSINESS

(A) *Permitted uses and structures.*

(5) *Uses permitted by conditional use permit.*

<i>General Business - Conditional Use</i>	
<u>Therapeutic Massage</u>	

SECTION 2. The City Council of the City of Lake Elmo hereby amends Title XV: Land Usage; Chapter 154: Zoning Code, by adding the following language:

§154.051 GB - GENERAL BUSINESS

(A) *Permitted uses and structures.*

(1) The following service/office uses:

<i>General Business - Service/Office</i>	
<u>Therapeutic Massage</u>	<u>See licensing requirements in §114.01</u>

SECTION 3. The City Council of the City of Lake Elmo hereby amends Title XI: Business Regulations; Chapter 114: Therapeutic Massage, by adding the following language:

114. THERAPEUTIC MASSAGE

§114.01 PURPOSE. The City Council finds that therapeutic massage and bodywork establishments potentially provide an opportunity for the commission of crimes, including but not limited to, prostitution. The purpose of this Chapter is therefore to prevent businesses from being used as facilities for commission of crimes and to assure that such businesses comply with basic consumer protection standards, thereby protecting the public health, safety, and general welfare of the citizens of the city.

§114.02 LICENSE REQUIRED.

- A. No person shall exercise, carry-on, or be engaged in the trade or business of providing massage therapy or bodywork or operating a massage therapy or bodywork establishment unless such person is currently licensed under this Chapter. The application and licensing process are described in §114.12-15. This section is intended to require the licensing of the business as an entity, as well as each person employed by the business for the purpose of providing therapeutic massage or bodywork therapy.
- B. Notwithstanding the licensing requirements detailed under paragraph (A) of this section, therapeutic massage premises license holders allowing persons to provide therapeutic massage or bodywork services at a therapeutic massage establishment without a current license may be held responsible and charged with a violation of this chapter.
- C. Persons or businesses currently engaged in the practice of therapeutic massage or bodywork at the time of enactment of this section shall be in full compliance with the terms and conditions of the section no later than ten (10) days following publication of the section. The exception to the compliance requirement shall be the required educational standards. Specifically, those persons employed in the practice of therapeutic massage or bodywork within the City of Lake Elmo prior to the enactment of this section shall be allowed to continue in such practice without meeting the required minimum standard of 500 formal training hours until January 1, 2014. Persons or businesses engaging in the practices described in this section after the enactment of this ordinance shall be in full compliance prior to engaging in such practices.

§114.03 LICENSING EXCEPTIONS. The following persons or places, as described, shall be exempt from the licensing requirements of this Chapter:

- A. Persons duly licensed by this state to practice medicine, surgery, osteopathy, chiropractic, physical therapy, or podiatry, provided the massage is

administered in the regular course of the medical business and not provided as part of a separate and distinct massage or bodywork business.

- B. Persons duly licensed by this state as beauty culturists or barbers, provided such persons do not hold themselves out as giving massage treatments and provided that massages provided by beauty culturists are limited to the head, hand, neck and feet, and that massages provided by barbers are limited to the head and neck.
- C. Students participating in an educational massage therapy program at an accredited college providing therapeutic massage therapy under the direct supervision of a licensed massage therapist/bodyworks therapist, or licensed health professional under which massage is within the scope of their practice.
- D. Off-site locations at which a client receives therapeutic massage or bodywork services from a licensed massage or bodywork therapist, licensed pursuant to the terms of this chapter.
- E. As described in Minnesota Statute 471.709: a massage therapist who is working for or an employee of a medical professional licensed under Chapter 147 or 148. (Ord. 745, 10/26/10).

§114.04 PERSONS AND LOCATIONS INELIGIBLE FOR A LICENSE.

- A. No license under this Chapter shall be issued to an applicant who is a natural person if such applicant:
 - 1. Is a minor at the time the application is filed;
 - 2. Has been convicted of or entered a plea of guilty within the previous three (3) years to a violation of this Chapter or of any other law regulating the practice of therapeutic massage, or of any law prohibiting criminal sexual conduct, prostitution, pandering, indecent conduct, or keeping of a disorderly house;
 - 3. Is not of good moral character or repute;
 - 4. Holds an intoxicating liquor license under Chapter 111 of this Code; or
 - 5. Provides any false, fraudulent, or deceptive information in the required application.
- B. The provisions of this section as described in paragraph (A), numbers (1) through (5), shall also apply to any partnership if such applicant has any general partner or managing partner meeting any of the described criteria; and shall also apply to any corporation or other organization if such applicant has any manager, proprietor, or agent in charge of the business meeting any of the described criteria.

C. The following locations shall be ineligible for a license under this Chapter:

1. No license shall be granted or renewed for operation on any property on which taxes, assessments, or other financial claims of the state, county, school district, or city are due, delinquent, or unpaid. In the event a suit has been commenced under Minnesota statutes, Sections 278.01-278.03, questioning the amount or validity of taxes, the City Council may on application waive strict compliance with this provision; no waiver may be granted, however, for taxes or any portion thereof which remain unpaid for a period exceeding one (1) year after becoming due.
2. No license shall be granted or renewed if the property on which the business is to be conducted is owned by a person who is ineligible for a license under the requirements of any Chapter of this Code.

§114.005 FEES.

A. Application Fee.

1. The license application fee shall be as determined by the City Council, and should, as closely as possible, reflect the actual cost of processing, verifying, and approving the application. An applicant for any license under this Chapter shall be responsible for the payment of all actual expenses related to the background investigation conducted by the city, up to a maximum cost of \$250.00 per person employed or contracted with as a massage or body works therapist. The intent of this section is to require a background investigation for all persons employed by or contracting with any massage therapy or bodywork business operating within the city. These costs shall be paid to the city prior to the issuance of an individual or business license
2. In the event that the licensed premises defines a structure not ready for occupancy, the time fixed for computation of the license fee for the initial license period shall be ninety (90) days after approval of the license by the City Council or upon the date the building is ready for occupancy, whichever is sooner.
3. When a new license application is submitted as a result of incorporation by an existing licensee and the ownership, control, and interest in the license are unchanged, no additional fee shall be required.

B. Annual License Renewal Fee

1. The annual license renewal fee shall be determined by the City Council and should, as closely as possible, reflect the actual cost of processing, verifying and approving the renewal application. For the purpose of establishing an initial licensing fee, the annual renewal fee shall be calculated at the rate

of \$50.00 for the business entity and \$25.00 per massage therapy or body works practitioner employed by or contracting with the business entity.

§114.06 GENERAL LICENSE RESTRICTIONS.

- A. Educational Requirements. Persons applying for a license under this Chapter shall provide, in addition to the general application described later in this Chapter, a copy of a diploma or certificate of graduation from a school approved by the state or local government agency having jurisdiction over the school. The minimum acceptable level of training shall be established five hundred (500) practitioner hours. Additionally, each practitioner must be currently certified in the administration of Cardiopulmonary Resuscitation (CPR).
- B. Inspection of Premise. During business hours, all therapeutic massage and bodywork establishments shall be open to inspection by city Building and License Inspectors, Health Officers, and Licensed Peace Officers. At the request of the described inspecting parties, any person licensed under this Chapter shall produce correct and authentic identification that includes a true legal name and current home address.
- C. License Display. A license issued under this Chapter must be posted in a conspicuous place in the premises for which it is used. The license issued is only effective for the compact and contiguous space specified in the approved license application. In addition to the license issued to the business establishment, the licenses issued to individual persons employed by the business shall be displayed in a similar manner.
- D. Maintenance of Order. A licensee under this Chapter shall be responsible for the conduct of the business being operated and shall maintain conditions of order.
- E. Gambling. No licensee under this Chapter may keep, possess, or operate, or permit the keeping, possession, or operation on the licensed premises of dice, slot machines, roulette wheels, punchboards, blackjack tables or pinball machines which return coins or slugs, chips, or tokens of any kind, which are redeemable in merchandise or cash. No gambling equipment authorized under Minnesota Statutes, Sections 349.11-349.60, may be kept or operated and no raffles may be conducted on the licensed premises and/or adjoining rooms. The purchase of lottery tickets may take place on the licensed premises as authorized by the director of the lottery pursuant to Minnesota Statutes, Section 349A.01-349A.15.
- F. Alcohol or Drugs Prohibited. No beer, liquor, narcotic drug, or controlled substance, as such terms are defined by state statutes or city code, shall be permitted on the premises.

- G. Building, Safety and Health Regulations. Any establishment licensed under this Chapter shall be in full compliance with all applicable local, state and federal building, safety and health laws and regulations.
- H. Locks on Doors. There shall be no locks placed upon or used on the doors of massage rooms.
- I. Professional Liability Insurance. Each business as an entity and each practitioner individually shall obtain and keep current a professional liability insurance policy governing the activities of the business and practitioner.
- J. Minnesota Statute Chapter 146A. Each business as an entity and each practitioner individually shall additionally comply with all of the requirements and regulations established by Minnesota Statute Chapter 146A. This chapter establishes the State Office of Unlicensed Complementary and Alternative Health Care Practice and establishes additional regulations and requirements for these businesses types.
- K. Appointment Record Requirement. All licensees shall be responsible for keeping appointment records of all off-site therapeutic massage/bodywork services provided. The records shall be sequential and shall include the name of the therapist conducting the service, the name and signature of the client, the address where the service was provided, and the date and time of the service. Licensed therapists shall have appointment records in possession at all off-site locations. Appointment records shall be kept for a period of twenty-four (24) months from the date of the service.

§114.07 Restrictions Regarding License Transfer. Each license under this Chapter shall be issued to the applicant only and shall not be transferable to any other person. No licensee shall loan, sell, give, or assign a license to another person.

§114.08 Suspension or Revocation of License.

- A. The City Council may suspend or revoke a license issued under this Chapter upon a finding of a violation of: (1) any of the provisions of this Chapter; (2) any state statute regulating therapeutic massage or bodywork; or (3) any state or local law relating to moral character and repute. Any conviction by the license holder for any other law regulating the practice of massage or bodywork, or of any law prohibiting criminal sexual conduct, prostitution, pandering, indecent conduct, or keeping of a disorderly house shall result in the immediate suspension pending a hearing on revocation of any license issued hereunder.
- B. Except in the case of a suspension pending a hearing on revocation, a revocation or suspension by the City Council shall be preceded by written notice to the licensee and a public hearing. The written notice shall give at least eight (8) days notice of time and place of the hearing and shall state the

nature of the charges against the license holder. The Council may, without any notice, suspend any license pending a hearing on revocation for a period not to exceed thirty (30) days. The notice may be served upon the license holder by United States mail addressed to the most recent address of the business in the license application.

§114.09 Prohibited Acts. Any touching, manipulation, stimulation, or excitation of the primary genital area of a client by a massage therapist or bodywork practitioner, or of a massage therapist or bodywork practitioner by a client, pursuant to the provision of a massage or bodywork technique, is expressly prohibited. The offer or suggestion to provide any of the described acts to a client by the massage therapist or bodywork practitioner is prohibited.

§114.10 Severability. If any section, subsection, sentence, clause, or phrase of this Chapter is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have adopted this Chapter and each section, subsection, sentences, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

§114.11 Penalty. A violation of this Chapter shall be a misdemeanor under Minnesota law.

§114.12 Application Content. Every application for a license under this Chapter shall be made on a form supplied by the issuing authority and shall contain the information described below. The intent of the application process is to acquire sufficient information on the owner of the business and each employee or contractor with the business as to allow a thorough background investigation and an informed decision by the city with regard to licensing. If the applicant is employed by or contracting with a business, and is not the owner of the business, it will not be necessary to provide information regarding the applicant's spouse.

A. If the applicant is a natural person:

1. The name, place and date of birth, street resident address, and phone number of the applicant.
2. Whether the applicant is a citizen of the United States or a resident alien.
3. Whether the applicant has ever used or been known by another name other than the applicant's name, and if so, the name or names used and information concerning the dates and places when used.
4. The name of the business if it is to be conducted under a designation, name, or style other than the name of the applicant and a certified copy of the certificate as required by Minnesota Statutes, Section 333.01.

5. Whether the applicant will engage in off-site massage/bodywork services.
 6. The street addresses at which the applicant has lived during the preceding five (5) years.
 7. The type, name, and location of every business or occupation in which the applicant has been engaged during the preceding five (5) years and the names(s) and address(es) of the applicant's employer(s) and partner(s), if any, for the preceding five (5) years.
 8. Whether the applicant has ever been convicted of a felony, crime, or violation of any ordinance other than a traffic ordinance. If so, the applicant shall furnish information as to the time, place, and offense for which convictions were had.
 9. The physical description of the applicant.
- B. If the applicant is married:
1. The name, place and date of birth, and street address of the applicant's current spouse.
 2. The type, name, and location of every business or occupation in which the applicant's current spouse has been engaged during the preceding five (5) years.
 3. The names and addresses of the employers or partners of the applicant's current spouse for the preceding five (5) years.
 4. Whether the applicant's current spouse has ever been convicted of any felony, crime, or violation of any ordinance other than a traffic ordinance. If so, the applicant shall furnish information as to the time, place, and offense for such convictions.
- C. If the applicant is a partnership:
1. The names(s) and address(es) of all general and limited partners and all information concerning each general partner required in subpart (1) of this section.
 2. The name(s) of the managing partner(s) and the interest of each partner in the massage therapy business.
 3. A true copy of the partnership agreement shall be submitted with the application. If the partnership is required to file a certificate as to a trade name pursuant to Minnesota Statutes, Section 333.01, a certified copy of such certificate shall be attached to the application.

D. If the applicant is a corporation or other organization:

1. The name of the corporation or business form, and if incorporated, the state of the incorporation.
2. A true copy of the Certificate of Incorporation, Articles of Incorporation or Association Agreement, and By-laws shall be attached to the application. If the application is a foreign corporation, a Certificate of Authority as required by Minnesota Statutes, Section 303.06, shall be attached.
3. The name of the manager(s), proprietor(s), or other agent(s) in charge of the business and all information concerning each manager, proprietor, or agent required in subpart (1) of this section.
4. A list of all persons who control or own an interest in excess of five (5) percent in such organization or business form or who are officers of the corporation or business form and all information concerning said persons required in subpart (1) of this section.

E. For all applicants:

1. Whether the applicant holds a current massage therapy license from any other governmental unit.
2. Whether the applicant has previously been denied a massage therapy license from any other governmental unit.
3. The names, street resident addresses, and business addresses of three residents of the seven-county metropolitan area, who are of good moral character and who are not related to the applicant or not holding any ownership in the premises or business, who may be referred to as to the applicant's and/or manager's character.
4. The location of the business premises.
5. The legal description of the premises to be licensed.
6. Whether all real estate and personal property taxes that are due and payable to the premises to be licensed have been paid, and if not paid, the years and amounts that are unpaid.
7. Whenever the application is for premises either planned or under construction or undergoing substantial alteration, the application shall be accompanied by a set of preliminary plans showing the design of the proposed premises to be licensed. If the plans or design are on file with the Lake Elmo Building Department, no plans need to be submitted with the issuing authority.

8. Such other information as the City Council or issuing authority may require.

§114.13 Application Execution. All applications for a license under this Chapter shall be signed and sworn to. If the application is that of a natural person, it shall be signed and sworn to by such person; if that of a corporation, by an officer thereof; and if that of a partnership, by one of the general partners; and if that of an unincorporated association, by the manager or managing officer thereof. Any falsification on a license application shall result in the denial of a license.

§114.14 Application Verification. All applications shall be referred to the issuing authority for verification and investigation of the facts set forth in the application. The issuing authority shall make a written report and recommendation to the City Council as to the issuance or non-issuance of the license. The City Council may order and conduct such additional investigation, as it deems necessary.

§114.15 Application Consideration.

- A. The City Council shall conduct a hearing on the license application within a reasonable period following receipt of the issuing authority's report and recommendation regarding the application. At least ten (10) days in advance of the City Council hearing on an application, the issuing authority shall cause notice of the hearing to be published in the official newspaper of the city, setting forth the day, time, and place of the hearing; the name of the applicant; the premises where the business is to be conducted; and the type of license which is sought. At the hearing, opportunity shall be given to any person to be heard for or against the granting of the license. Additional hearings on the application may be held if the City Council deems additional hearings necessary. After the hearing or hearings on the application, the City Council may, in its discretion, grant or deny the application.
- B. If an application is granted for a location where a building is under construction or not ready for occupancy, the license shall not be delivered to the licensee until a certificate of occupancy has been issued for the licensed premises.

§114.16 Expiration of License; Prorating. All licenses issued pursuant to this Chapter shall expire on the last day of October of each year. Each license shall be issued for a period of one year except that if a portion of the license year (November to October following) has elapsed at such time as the application is filed, a license may be issued for the remainder of the license year for a pro rata fee. For the purpose of computing such "pro rata fee", any fraction of a month falling within the license period shall be counted as a full month.

§114.17 Renewal Application

- A. Applications for the renewal of an existing license shall be made at least thirty (30) days prior to the date of the expiration of the license and shall be made in such form as the issuing authority requires. If, in the judgment of the issuing

authority, good and sufficient cause is shown by an applicant for the applicant's failure to submit a renewal application before the expiration of the existing license, the issuing authority may, if the other provisions of this Chapter are complied with, grant the renewal application.

B. A license under this Chapter will not be renewed:

1. If the issuing authority determines that the licensee has failed to comply with the provisions of this Chapter in preceding license years.
2. If the licensee, or if the licensee does not manage the establishment, the manager of the licensed premises is not a resident of the seven-county metropolitan area on the date that the renewal takes effect.
3. If in the case of a partnership, the managing partner or other person who manages the establishment is not a resident of the seven-county metropolitan area on the date the renewal takes effect.
4. If in the case of a corporation, or other organization, the manager, a proprietor, or agent in charge of the establishment is not a resident of the seven-county metropolitan area on the date the renewal takes effect.
5. The time for establishing residence in the seven-county metropolitan area may, for good cause, be extended by the City Council.

SECTION 2. Effective Date. This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.

SECTION 3. Adoption Date. This Ordinance 2012-64 was adopted on this fourth day of December 2012, by a vote of 5 Ayes and 0 Nays.

LAKE ELMO CITY COUNCIL



Dean A. Johnston, Mayor

ATTEST:



Adam Bell, City Clerk

This Ordinance 2012-64 was published on the 12th day of December, 2012.