

CITY COMMISSION AGENDA MEMO
April 4, 2019

FROM: Jared Wasinger, Assistant to the City Manager

MEETING: April 16, 2019

SUBJECT: Ordinance No. 7409 Establishing Licensing Requirements and Regulations for Massage Therapy Establishments and Massage Therapists

PRESENTER: Jared Wasinger, Assistant to the City Manager

BACKGROUND

Kansas is one of only two states that does not regulate massage therapy. According to the League of Kansas Municipalities, legislation to regulate and licensure the industry has been introduced in similar fashion since at least 2012. During the 2019 legislative session HB 2184 was introduced on behalf of the American Massage Therapy Association (and has been introduced in recent years in similar fashion). HB 2184 has not received a hearing this year and will likely have no action this Legislative Session.

The absence of licensing and regulation at the state level has led many cities in Kansas to see the attraction of illicit businesses, including human sex trafficking, as well as sexual assault and other crimes. This has led to several cities in Kansas enacting local ordinances to license massage therapy establishments and massage therapists.

In August 2018, Riley County Attorney Barry Wilkerson contacted the City Commission to consider adopting an ordinance similar to cities in Kansas. The Riley County Police Department (RCPD) has concurred with Riley County Attorney Wilkerson concerning licensing massage therapy establishments and therapists to provide a safe environment for the general public and therapists, as well as combat illicit activity. Further, the City Commission directed City Administration to bring forth the issue as a discussion item in fall 2018.

City Administration gathered research from ordinances of other cities in Kansas that license massage therapy and created a general framework of ordinance provisions that could be considered, then had a public meeting with business owners and practitioners in the community on September 19, 2018, to gain feedback and comments from the group. Following the public meeting, City Administration held a discussion item with the City Commission during their October 2, 2018, legislative meeting. During the discussion item, there was concurrence from the City Commission to move forward with an

ordinance to license massage therapy establishments and massage therapists. At the time, City Administration posed other specific questions related to fees, location of establishments, and patron registers for City Administration to address in a forthcoming ordinance, of which is in the Discussion section and in the ordinance being considered. During both the discussion item and during the public meeting, a majority of practitioners in attendance expressed support for licensure of some kind.

On April 2, 2019, the City Commission approved first reading of an ordinance adding Article III to Chapter 19 of the Code of Ordinances establishing licensing requirements and regulations for massage therapy establishments and massage therapists.

DISCUSSION

The ordinance under consideration has gone through multiple revisions based on input from City Administration, City Attorney's Office, Code Services Division, Customer Service Division, Riley County Police Department, Riley County Attorney, and feedback and input from practitioner. The original ordinance was primarily based on local ordinances from Olathe and Wichita, and proposed state legislation was also considered, but ultimately drafted to fit the needs of Manhattan and its practitioners. A public meeting with local practitioners was also conducted to review a draft ordinance on March 27, 2019. RCPD Director Butler and Assistant Director Moldrup, and Riley County Attorney Wilkerson were present to provide comments and feedback.

The major elements of the massage therapy ordinance as follows, with discussion bullet points to provide clarification:

Definition of massage therapy

- The definition used in the draft ordinance is identical to the language from the HB 2184 proposed during the 2019 legislative session and very similar to past proposals. Practitioners voiced no objections to this definition during public meetings.
- **Exemptions:** the ordinance includes multiple exemptions, including but not limited to, medical facilities, persons licensed in other fields under the Kansas Board of Healing Arts engaging or performing under the laws of their licensed practice, nurses, persons engaging in barbering or the practice of cosmetology under applicable state laws, and trainers working for athletic teams.

Licensing Massage Therapy Establishments

- **Length of licensure** is two years (with a biennial renewal). This remains unchanged from the previous recommendation during the October 2018 discussion item. Most cities in Kansas have an annual license, with the exception of Wichita. Practitioners voiced support for a biennial license as opposed to an annual so fee requirements would be less overbearing. The biennial licensure is also in-line with other general City contractor licenses issued by Code Services.
- **Fees** required for establishments is \$200 for both the initial application and renewal. The fee is consistent with other cities in Kansas, which ranged from \$100-\$300

annually. Additionally, applicants will be required to pay the cost for a criminal background check. Currently, this fee is \$20. It is separated from the application fee due to it being administered by a third party. In the event the background check fee changes, it would not require amending the City's ordinance.

- **Finger Printing** is currently excluded from the draft ordinance. While a handful of cities in Kansas require fingerprints for establishment and therapist applications, those cities have police departments within their city government who process these applications and background checks. While RCPD has voiced their support for requiring finger printing to further ensure full vetting of applicants, these applications will be processed by the Customer Service Division who does not process fingerprint applications for any other City licenses, and does not have the professional background to evaluate fingerprint results.
- The **application** will include general personal information of the licensee including past employment and photo identification, and business location information.
 - Each operator must be listed by the licensee on the application, including photo ID, and general personal information. Operators are defined at the beginning of the ordinance but generally include any person with 10% or greater financial interest in the establishment, or any person principally in charge of the establishment. While operators are not subject to the background check, operators must state under oath on the application that they have not had a license revoked or suspended in the last 10 years, they are not a registered sex offender, and in the past five years have not been convicted of a felony or any crime involving moral turpitude.
- **Issuance.** The proposed ordinance lists a set of criteria that would cause the City Clerk to not issue a license. These include, but are not limited to, being under 18 years of age, being a registered sex offender, being convicted of a felony or any crime of moral turpitude (as defined in the ordinance) in the past five years. This provision related to applicable felonies and definition of moral turpitude was reviewed and supported by RCPD and the Riley County Attorney in determining what crimes should be included that would prevent someone from getting a license.
 - If the Commission desires certain offenses such as those related to possession, sale or distribution of any illegal drug or controlled substance (which is currently listed in the ordinance) can be altered or removed prior to second reading, as some Commissioners voiced such opinion during the discussion item.
- **Operational Regulations.** The ordinance lists several operation regulations for establishments. Many were vetted during the public meetings with practitioners with no objections, such as hours of operation (between 6am-midnight), having an operator on premise at all times, complying with all Code and Zoning requirements, no alcohol, and covering of the patron's private parts during a massage. Other provisions were debated further and either included, excluded or altered in the draft ordinance being considered.
 - **Doors remaining unlocked during business hours.** Such a provision was included in the previous draft (and was common throughout other local ordinances in Kansas) to ensure access to those allowed through right-of-

entry to inspect establishments, as well as to deter illicit activity. Many practitioners during the public meetings sited some establishments are accessory establishments within other commercial building and they do not have control over main entries. Furthermore, multiple practitioners practice alone and have appointments in the event and feel safer when the main entry door is locked in order to protect the patient and therapist. RCPD was comfortable with amending this provision to allow establishments to be locked during business hours if operators are able to provide reasonable and timely access to the establishment upon request from a RCPD employee or Code official.

- **Attire.** During the initial public meeting and discussion item, various examples of how employee/therapist attire was regulated and worded was brought into question, and practitioners expressed clarity on such provisions. The provision in the draft ordinance requires clothing that covers the person's chest, buttocks and genital areas, and is not transparent.
- **Contact.** A previous draft ordinance prohibited any contact with a patron's pubic region, genitals, perineum, anal region, and/or the female breast. During public meetings, a majority of practitioners voiced support for removing the language related to the female breast. Many sited examples of working with patrons who have had past surgeries, cancer or other pain in the female breast region and therapy in that area is not an uncommon practice. RCPD, the Riley County Attorney and City Staff were comfortable with removing that portion and it is not included in the ordinance under consideration.
- **Table Showers.** The majority of other cities in Kansas prohibit table showers, which is defined as a patron being washed by the massage therapist. Many practitioners noted some form of washing a patron is common practice in massage therapy, through salt scrubs or the cleanup of oils for example. Practitioners felt table showers is a term that is outdated language that didn't match common practice that occurs today. Further, there are already provisions within the same section related to prohibiting contact or provision of contact that arouses, provides sexual gratification, and prohibits contact in private areas of the body. RCPD, the Riley County Attorney and City Staff were comfortable with removing that provision and it is not included in the ordinance under consideration.
- **Massage therapy establishments as home occupations.** A previous draft of the ordinance grandfathered current practitioners with home-based establishments. During the initial discussion, multiple massage therapists cited operating their practice out of their home. RCPD and Riley County Attorney Wilkerson recommended not allowing "in-home establishment" citing situations involving assault that have occurred in the past or would be likely to occur. During the discussion item, a majority of the Commission expressed support for grandfathering existing in-home establishments. During the public meeting on March 27th, practitioners voiced opposition to the grandfathering provision, as it would prohibit current massage therapists who are meeting all necessary requirements currently from downsizing a practice in the future. Based on those

discussion, RCPD and the Riley County Attorney were comfortable with removing the grandfathering provision. It was also noted there would be a benefit to list all licensed establishments on the City's website for the public to see, which is a current practice the City does with all other licenses, and will do with this license as well. The draft ordinance under consideration removes the grandfathering provision, and allows all current and future in-home establishments that meet applicable Code and Zoning Regulations.

Licensing Massage Therapists

- **Length of licensure** is two years (with a biennial renewal). This remains unchanged from the previous recommendation during the October 2018 discussion item. Most cities in Kansas have an annual license for therapists, with the exception of Wichita and Lawrence.
- **Fees** required for establishments is \$75 for both the initial application and renewal. Additionally, applicants will be required to pay the cost for a criminal background check. The fee is consistent with other cities in Kansas, which ranged from \$25-\$125 annually. HB 2184 proposed an annual license fee of \$80 plus costs for a background check. This fee is also similar to other occupations licensed annually by the Kansas Board of Healing Arts (\$80 Athletic Trainers, \$80 for Occupational Therapists, \$80 Physical Therapists, and \$300 for Chiropractors).
 - **Finger printing** comments noted above would apply similarly to therapists.
- The **application** will include general personal information of the licensee including past employment and photo identification, must state under oath on the application that they have had a license revoked or suspended in the last 10 years.
- **Issuance.** The proposed ordinance lists a set of criteria that would cause the City Clerk to not issue a license, and is nearly identical to the criteria to establishments, related to age, being a registered sex offender, committing a felony or crimes of moral turpitude.
 - **Educational Requirements.** The ordinance requires compliance of certain educational requirements. Therapists must meet one or more of the following requirements: 1) passage of the Massage and Bodywork Licensure exam (MBLEx); 2) passage of the National Certificate of Therapeutic massage and Bodywork exam (NCTMB) prior to February 1, 2015 (this is due the NCTMB being no longer offered, but still recognized throughout the profession, as of 2015); 3) an official transcript showing completion of 500 hours within a recognized massage therapy school; or 4) Proof of 150 credit hours of education in a massage therapy program from an accredited institution or massage therapist school, at least 12 hours of continuing education units in the last five years, and membership in a nationally recognized massage therapy association. Provision (4) is included because the educational system of massage therapy, and many practitioners who have been in the profession for a long time started before school was more predominately offered and accessible.
 - There are a small handful of practitioners who voiced concern that, while they have been practicing in the community for a long time,

they still may not meet the educational requirements. A second provision is offered for applicants within 60 days of the effective date of the ordinance (August 1, 2019) to state through sworn affidavit they have actively practiced massage therapy continuously for the past five years, as well as provide through sworn affidavit from another licensed massage therapist that they have been actively practicing for the past five years, as well as provide some proof of practice, such as tax returns, etc.

- **Continuing Education Requirements.** The draft ordinance under consideration requires therapists upon each renewal of their biennial license to provide proof of 12 hours of continuing education in massage therapy through an accredited institution, massage therapist school, or a nationally recognized massage therapy association. A majority of practitioners voiced support of this provision to ensure practicing therapists were keeping up trends and practices in the profession, and this provision was common in other local ordinances from other cities in Kansas. Furthermore, the continuing education requirement is also common to other occupations licensed by the Kansas Board of Healing Arts (20 hours annually for Athletic Trainers, 40 hours biennial for Occupational Therapists, 40 hours biennial for Physical Therapists, and 50 hours annually for Chiropractors).
- **Massage Therapist Regulations.** There are multiple massage therapist regulations that mirror the regulations required of establishments, including hours of operation (between 6am-midnight), no alcohol, and covering of the patron's private parts during a massage, contact, and attire.
 - **Age of patrons.** Multiple ordinances throughout Kansas included various provisions related to age and parental consent. The draft ordinance under consideration requires parental or legal guardian consent for patrons aged 17 and 16. Patrons 15 years of age or younger require parental or legal guardian present at the massage therapy establishment or location the massage is provided. This provision was accepted among practitioners, RCPD, Riley County Attorney, and staff.

Daily Register requirements for Establishments and Therapists

- Operational regulations required of establishments and therapists include maintaining a daily register of patrons and therapists. This provision is required in all local ordinances in Kansas that city staff researched.
 - Massage therapy establishments are required to maintain two daily registers and be kept on premises for one year: one of each massage therapists that operates on the premises (name, residential address, telephone number, and copy of their City-issued license; and another register of each patron's appointment time and therapist (the patron's name, time, residential address, telephone number, and in the event of a minor, parental/guardian authorization).

- Massage therapists must keep register of each patron's appointment time and therapist (the patron's name, time, residential address, telephone number, and in the event of a minor, parental/guardian authorization).
- The ordinance under consideration also maintains that registers of both therapists and establishments must be open to inspection during business hours by an employee of RCPD. This provision is included for law enforcement in the event of a complaint from a patron or therapist involved violation of this ordinance or other laws.
- Of the practitioners that have expressed concern with this provision throughout public meetings, the primary concern is not with maintaining the register, but access to inspection. A previous draft of the ordinance also included a right to inspection from Code officials, however, that provision has been removed. During inspections of establishments as Code officials will inspect to ensure all provisions of the ordinance are being followed and the establishment meets applicable Code requirements. During inspections, Code officials will require the licensee to affirm if and where registers are being maintained, but will not have authority to inspect the register itself.
 - Other practitioners have voiced concern if inspection by an RCPD employee is prohibited under HIPAA (the Health Insurance Portability and Accountability Act of 1996, which is US legislation that provides data privacy and security provisions for safeguarding medical information). However, to date, no practitioner has provided a legal opinion of how this provision violates HIPAA, and why it doesn't fall within a HIPAA release exception. There are multiple exceptions to HIPAA as it relates to law enforcement and safety. Furthermore, RCPD maintains through its only policy, proceeds and state and federal regulations that any inspection involving a daily register would remain confidential. According to RCPD Administration, these inspections "would be covered under Kansas Open Records Act (KORA) regulations and could be considered evidence and would therefore be considered privileged information and would not be released to the public. If not evidence, it would be considered a criminal investigation record and would also be mandatorily closed to the public unless a court ruled that it be opened (KSA 45-221)."

During consideration of first reading of the ordinance, some Commissioners wanted clarification related to the term and constitutionality on including "sodomy" as a crime as it relates to the definition of crimes involving moral turpitude.

The City Attorney's Office, in coordination with the Riley County Attorney, provided the following opinion:

- K.S.A. 21-5504 criminalizes "criminal sodomy" and "aggravated criminal sodomy." Subsection (a) defines criminal sodomy to include acts between "persons who are 16 or more years of age and members of the same sex." The other provisions of the state law criminalize acts based upon age or lack of consent. On February 14, 2014, the Kansas Supreme Court held that subsection (a) is unconstitutional. In past legislative sessions, bills have been introduced to

strike subsection (a), but have not been successful. While the law still includes the provision related persons of the same sex, case law prohibits the prosecution of consensual adult same sex relationships under this statute. Riley County Attorney Barry Wilkerson said that the subsection (a) cannot be prosecuted in Kansas as applied to a consenting adult relationship, but recommends leaving “sodomy” in the ordinance because of the other acts it criminalizes. It should be noted that the ordinance only disqualifies convictions that occurred in the past five years. If an applicant has a conviction for sodomy prior to 2014 when the law was declared unconstitutional, the conviction would not disqualify them from the license.

During first reading there was also a request for clarification regarding Sec. 19-62 as it relates to exceptions to the ordinance and community businesses that provide cosmetology/spa-related services. The ordinance approved during first reading and under consideration for second reading exempts “any person engaged in barbering or in the practice of cosmetology or apprentice while carrying out their particular profession or business and holding a valid, unrevoked license or certificate of registration issued under the laws of this state applicable to such barbering or cosmetology practice.”

Generally, the Kansas Board of Cosmetology licenses and inspects establishments and individuals practicing in fields such as hair, nails, facials, and skin care. However, the practice of massage therapy as defined in this ordinance by an individual or establishment is not licensed, regulated or inspected. Some businesses, such as salons or spas, offer services that are regulated by the Kansas Board of Cosmetology listed above, as well as massage therapy services that are not regulated by the Kansas Board of Cosmetology. In those instances, the state will inspect those premises as it relates to the applicable practices governed by the Board, each that apply different regulations to different premises and activities. This ordinance applies to any massage therapy activity as defined in the ordinance occurring on those premises that is not being regulated or inspected by the State of Kansas Board of Cosmetology. In such circumstances, the business would hold different licenses by the State and the City, and be inspected based on different regulations. Some business owners during public meetings and public comment were not in favor of obtaining two different licenses. However, not requiring the massage therapy establishment license for such businesses creates a loophole in the ordinance to allow a business to practice massage therapy under the perception of a cosmetology/salon/spa framework without being required to adhere to any of the protections or requirements to the ordinance. That means not only would the City not be able to license or inspect the massage therapy practice, the massage therapy activities would not have to comply with any of the health and safety rules set forth in Section 19-75 or Section 19-86.

Based on the following clarifications, the ordinance under consideration for second reading remains unchanged from first reading.

City Administration believes after multiple public meetings with practitioners and conversations with RCPD, Riley County Attorney, Code Services, Customer Services staff and the City Commission, this ordinance meets the needs and desires of the public, the governing body and massage therapists and establishments.

FINANCING

The estimated fiscal impact to the City is minimal. Currently the City does not have a license and fee for massage business or massage therapists. It is anticipated that the licensing fees charged would offset staffing costs of processing applications, verifying information, licensing the establishments and therapists, and inspecting establishments. It is estimated there are in the range of 30-35 massage therapy establishments within city limits and likely double that amount or more of massage therapists. City Administration is not proposing adding any staff for administration of this ordinance.

ALTERNATIVES

It appears the Commission has the following alternative concerning the issue at hand. The Commission may:

1. Approve Ordinance No. 7409 adding Article III to Chapter 19 of the Code of Ordinances establishing licensing requirements and regulations for massage therapy establishments and massage therapists.
2. Deny the recommended Ordinance.
3. Modify to meet the needs of the Commission.
4. Table the request.

RECOMMENDATION

City Administration recommends the City Commission approve an ordinance adding Article III to Chapter 19 of the Code of Ordinances establishing licensing requirements and regulations for massage therapy establishments and massage therapists.

POSSIBLE MOTION

Approve Ordinance No. 7409 adding Article III to Chapter 19 of the Code of Ordinances establishing licensing requirements and regulations for massage therapy establishments and massage therapists.

Enclosure:

1. Ordinance No. 7409

ORDINANCE NO. 7409

AN ORDINANCE ADDING NEW ARTICLE III TO CHAPTER 19 OF THE CODE OF ORDINANCES OF THE CITY OF MANHATTAN, KANSAS; ESTABLISHING LICENSING REQUIREMENTS AND REGULATIONS FOR MASSAGE THERAPY ESTABLISHMENTS AND MASSAGE THERAPISTS.

WHEREAS, the State of Kansas does not license nor regulate massage therapy establishments or massage therapists; and,

WHEREAS, the City Commission finds that the absence of such licensing and regulation may attract illicit businesses, including human sex trafficking, or may increase the likelihood of sexual assault and other crimes; and,

WHEREAS, the City Commission finds that regulation of the health and sanitation of massage therapy establishments and massage therapists helps protect the operators, massage therapists and the public; and,

WHEREAS, the City desires to license and regulate massage therapy establishments and massage therapists within City limits to reduce the potential for crime and to protect the public health, safety and welfare.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF MANHATTAN, KANSAS:

Section 1: That Chapter 19 of the Code of Ordinances of the City of Manhattan, Kansas, is hereby amended by adding new Article III, which shall be titled and read as follows:

ARTICLE III. Massage Therapy Licenses

Section 2: That Chapter 19 of the Code of Ordinances of the City of Manhattan, Kansas, is hereby amended by adding new Division 1 to Article III, which shall be titled and read as follows:

Division 1. Generally.

Sec. 19-61. Definitions.

Accredited Institution shall mean a post-secondary institution that is accredited by one of the regional agencies of the higher learning commission or an institution recognized by the Kansas Board of Regents to provide vocational, technical or post-secondary education in the state.

Convicted or *conviction* shall mean being found guilty or entering into a diversion agreement or deferred judgment agreement.

Crimes involving moral turpitude includes charges of sale of sexual relations, prostitution, buying sexual relations, patronizing a prostitute, human trafficking,

promoting prostitution, aggravated human trafficking, sodomy, soliciting for immoral purposes, public nudity, lewd and lascivious behavior, sexual battery, loitering for the purposes of solicitation, commercial sexual exploitation of a minor, indecent liberties with a child, incest, adultery, bigamy, promoting obscenity, promoting obscenity to minors, displaying material harmful to minors, any crime set forth in Article 55 of Chapter 21 of the Kansas Statutes Annotated; possession, sale or distribution of any illegal drug or controlled substance or any other offenses similar to those listed herein that are contrary to the laws of any city, state or of the United States.

Duly authorized athletic team shall mean any semi-professional or professional athletic team, or any athletic team organized by and associated with any elementary, middle or high school; any secondary educational institution or accredited post-secondary educational institution.

Employee shall mean any person, other than a massage therapist, who renders any service for or on behalf of a licensee under this article and/or who receives compensation from the licensee or a patron.

Massage therapist shall mean any person who, for any consideration whatsoever, engages in massage therapy.

Massage therapy shall mean a service involving the external manipulation or pressure of soft tissue for therapeutic purposes. It is the application of a system of structured touch, pressure, movement and holding of the soft tissue of the human body in which the primary intent is to relieve pain, improve circulation, relieve stress, increase relaxation and enhance or restore the health and well-being of the client. The practice of massage therapy includes complementary methods, including the external application of water, heat, cold, lubrication, salt scrubs, body wraps or other topical preparations; and electromechanical devices that mimic or enhance the actions possible by the hands.

Massage therapy establishment shall mean any establishment where any person engages in massage therapy for any compensation whatsoever.

Massage therapist school shall mean an approved massage therapy education program that meets the criteria established in this chapter, and any amendments thereto, and is both authorized in the jurisdiction in which it is located and that reflects a curriculum acceptable to an accrediting body recognized by the United States Department of Education. Education received outside of the United States must be substantially equivalent to the criteria of this chapter and must be recognized by the jurisdiction in which it is located.

Off-site massage therapy shall mean massage therapy that is provided, for any consideration whatsoever, by a massage therapist upon any business or residential

premises provided by the patron, other than upon the premises of a massage therapy establishment or upon the massage therapist's residential premises.

Operator shall mean the following persons:

- (a) A massage therapy establishment licensee;
- (b) Any person with a financial interest in the partnership, corporation, limited liability company or other type of organization that owns or operates the massage therapy establishment license, if such person who has more than a ten percent interest in such entity; or
- (c) Any person whom the licensee designates on the massage therapy establishment license as a person who may be principally in charge of a massage therapy establishment at any given time, including but not limited to a manager.

Patron shall mean any person who utilizes or receives the services of any massage therapist and/or massage therapy establishment under such circumstances that it is reasonably expected he or she will pay money or give any other consideration therefor.

Sec. 19-62. Exceptions.

The provisions of this article shall not apply to the following:

- (a) Any medical care facility as defined and licensed under the laws of this state applicable to such medical care facility or persons employed thereby, while engaged in their usual duties for such medical care facility;
- (b) Any adult care home as defined and licensed under the laws of this state applicable to such adult care home or persons employed thereby, while engaged in their usual duties for such adult care home;
- (c) A business solely utilizing mechanized or electric massage chairs or tables which does not otherwise offer or provide personal massage therapy services any person and which does not otherwise employ massage therapists;
- (d) Persons holding an unrevoked license or certificate issued by the Kansas board of healing arts to practice any of the healing arts under the laws of the state while such persons are engaged in their licensed practice; and all persons working under the supervision and control of such licensed persons while engaged in their licensed practice;
- (e) Persons holding an unrevoked license or certificate issued by the Kansas board of nursing to practice nursing under the laws of the state while such persons are engaged in their licensed practice; and all persons working under the supervision and control of such licensed persons while engaged in their licensed practice;
- (f) Any person engaged in barbering or in the practice of cosmetology or apprentice while carrying out their particular profession or business and holding a valid, unrevoked license or certificate of registration issued

under the laws of this state applicable to such barbering or cosmetology practice;

- (g) Any person providing massage therapy to a person related to them by blood or marriage when there is no consideration for such massage therapy; or
- (h) A trainer of any duly constituted athletic team while in the normal course of his or her duties.

Provided that, if any of the persons described in subsections (d) through (h) provide any massage therapy services other than as described in subsections (d) through (h), within a licensed massage therapy establishment or through off-site massage therapy, such person shall be required to obtain a massage therapist license prior to providing such services.

Sec. 19-63. Authority to promulgate rules and regulations.

The city clerk shall have the power to make and enforce reasonable rules and regulations not in conflict with, but to carry out, the intent of this article.

Sec. 19-64. Transfer or assignment of licenses.

No massage therapy establishment license or massage therapist license is transferable or assignable, and such authority as a license confers shall be conferred only on the licensee and/or the location named therein. If a massage therapy establishment or the business entity that holds the license of such a business changes either the name of the business entity or the name under which the entity is doing business ("dba" name), the existing license shall not be transferred and a new license shall be required to continue to conduct a massage therapy establishment.

Sec. 19-65. Revocation or suspension of any license.

- (a) The city clerk may revoke or suspend any license issued pursuant to this article, for any of the following reasons:
 - (1) After license issuance, any licensee or operator does not qualify with any qualifications requirement;
 - (2) A licensee or operator violates, or allows or permits the violation, of any license condition, or of any other provision of this article;
 - (3) A massage therapy establishment licensee violates, or allows or permits the violation, of this article or the city's building codes or zoning regulations upon the massage therapy establishment premises;
 - (4) A licensee or operator of a massage therapy establishment refuses to permit or allow an inspection as required by a massage therapy license; or,
 - (5) Within the preceding two years, there have been two or more violations of this article, applicable law or any city code relating to the massage therapist or the massage therapy establishment, that have occurred under such circumstances that an operator of the massage

therapy establishment or a licensee knew or should have known that such violations were committed.

- (b) The city clerk shall provide written notice to the licensee of any license denial or license change by stating the basis of such action. The city clerk shall provide written notice of revocation or suspension to the licensee at least five (5) days prior to the effective date of such action by stating the basis of such action. The notice shall state the effective date of the revocation or suspension of the license; in the case of a suspension, the notice shall state the length of the suspension, not to exceed thirty (30) days. Any notice required by this subsection shall further state that the licensee has the right to appeal the action pursuant to this article.

Sec. 19-66. Appeal.

An applicant or licensee may appeal any license denial, revocation or suspension by filing a written appeal stating the basis of such appeal with the city manager within ten (10) days of the city clerk's decision. The city manager shall hold a hearing on the appeal within ten (10) days of receiving such appeal, and shall consider evidence provided by the city clerk and the appellant. The city manager's decision shall be final. An appeal of the city manager's decision to the district court, pursuant to state law, shall not stay the denial, suspension or revocation of the license, nor any other final decision of the city manager.

Secs. 19-67—19-70. Reserved.

Section 3: That Chapter 19 of the Code of Ordinances of the City of Manhattan, Kansas, is hereby amended by adding new Division 2 to Article III, which shall be titled and read as follows:

Division 2. Massage Therapy Establishments.

Sec. 19-71. Massage therapy establishment license required; term; licensee responsibility.

- (a) It shall be unlawful for any person to operate a massage therapy establishment that does not have a valid massage therapy establishment license issued by the City.
- (b) A massage therapy establishment license is valid for a period of two (2) years from the date of issuance, unless it is terminated earlier pursuant to this article.
- (c) A massage therapy establishment licensee shall, at all times, be responsible for the conduct of business on the licensed massage therapy establishment premises, and for any act or conduct of an operator, massage therapist or employee, which constitutes a violation of the provisions of this article. Any violation of the city, state or federal laws committed on the licensed premises by any licensee, operator, massage therapist or employee affecting the eligibility or suitability of the licensee to hold a license, may be grounds for license suspension or revocation.

Sec. 19-72. Application for massage therapy establishment license; fee; issuance.

- (a) The application for a massage therapy establishment license shall be submitted on the form provided by the city. An application shall not be considered complete until all the information has been provided on the city's forms and the application and criminal background investigation fees have been paid to the city.
- (b) The application fee for a massage therapy establishment license shall be two hundred dollars (\$200). The applicant shall also pay to the city the cost of the city's criminal background investigation. The criminal background investigation fee shall be waived if the city has conducted a criminal background investigation on the applicant for a license issued pursuant to this article within the past thirty (30) calendar days. The fees are non-refundable.
- (c) The application shall include the following information for each operator of the massage therapy establishment:
 - (1) Evidence that each operator is at least eighteen (18) years old by providing a copy of a current state- or federal-issued form of photo identification;
 - (2) Each operator's name, current residential address and phone number;
 - (3) A statement made under oath, signed by each operator, as to whether the operator has had a massage therapy establishment license or massage therapist license denied, suspended or revoked, or has surrendered such a license in lieu thereof, in the city or in any other state or city within the preceding ten (10) years; and,
 - (4) A statement made under oath, signed by each operator, as to whether the operator is a registered sex offender or has, in the past five years immediately preceding the date of application, been convicted of any felony or any crime involving moral turpitude.
- (d) The application shall include the following information for the license applicant:
 - (1) Information and authorization necessary to perform a criminal background investigation on the applicant, on a separate form provided by the city; and,
 - (2) Business, occupation, or employment of the applicant for the three (3) years immediately preceding the date of application.
- (e) The application shall include the following information for the proposed massage therapy establishment:
 - (1) The address and location of the establishment;
 - (2) The business hours that the massage therapy establishment will be open to the public;
 - (3) The exact nature of services to be offered or provided within the massage therapy establishment;
 - (4) The "dba" or proposed name of the massage therapy establishment; and
 - (5) If the applicant does not own the proposed massage therapy establishment premises, the applicant shall provide evidence of

applicant's ability to secure a lease for the proposed massage therapy establishment and contact information for the landlord.

- (f) If a license is issued upon the application, the licensee must provide any changes to the information on the application at least fourteen (14) days prior to the effective date of the change. The city clerk shall review the change in information for compliance with this article and notify the licensee whether the change is approved or denied.

Sec. 19-73. Issuance of Massage Therapy Establishment License.

Upon receiving a complete license application, and following the completion of the applicant's criminal background investigation by the city and building official's inspections, the city clerk shall issue a license for a massage therapy establishment if the license application and the location meet the requirements of this article. Provided that, the city clerk shall not issue a license for a massage therapy establishment if any of the following conditions exist:

- (a) The applicant or any operator of the establishment:
 - (1) Is younger than eighteen (18) years of age;
 - (2) Is a registered sex offender;
 - (3) Has, within the past five years immediately preceding the date of application, been convicted of any felony or any crime involving moral turpitude;
 - (4) Made any false, misleading, or fraudulent statement of fact in the license application or in any document required by the city in conjunction therewith; or,
 - (5) Has had a massage therapy establishment or massage therapist license or permit denied, revoked or suspended, or has voluntarily surrendered such permit or license in lieu of revocation or suspension, by the city or by any other state or local jurisdiction, within ten (10) years prior to the date of application.
- (b) The massage therapy establishment location or premises:
 - (1) Does not comply with all applicable laws, including but not limited to the, city's building codes and zoning regulations; or
 - (2) Is a home-occupation that does not meet the requirements of this article.

Sec. 19-74. Inspections, Immediate Right of Entry.

- (a) Prior to the approval of a massage therapy establishment application, the building official shall conduct an inspection of the final establishment set-up to determine compliance with the following:
 - (1) The requirements of this article, as applicable to the premises; and,
 - (2) The city's building codes and zoning regulations.

The massage therapy establishment license shall not be approved, and the establishment shall not conduct business at the premises, until and unless the

establishment has successfully completed all required inspections within ninety (90) days of submitting the license application.

If, within 90 days of the date the application is submitted, the inspections are not completed, or the premises fails to meet the inspection requirements set forth in subsections (a)(1) and (a)(2), the license application shall be denied.

- (b) It shall be a condition of the issuance of each massage therapy establishment license that a city code official or any employee of the Riley County Police Department shall have the right of immediate entry and inspection, during business hours, of the building containing the massage therapy establishment, to inspect for compliance with this article. The application for and acceptance of a massage therapy establishment license shall conclusively be consent of the applicant and licensee or operator to immediate entry and inspection of the licensed premises. Such consent shall not be revocable during the term of the license. A licensee or operator's refusal to or failure to allow entry or to hinder the inspection shall be grounds for license suspension or revocation.

Sec. 19-75. Massage therapy establishment operational regulations.

The massage therapy establishment shall comply with the following operational regulations:

- (a) Any person providing massage therapy within a massage therapy establishment must have a valid city-issued massage therapist license.
- (b) An operator must be on the premises and supervise the massage therapy establishment at all times during business hours. In the case of an in-home massage therapy establishment approved pursuant to this article, the licensee and any operator must reside in the dwelling unit in compliance with the zoning regulations.
- (c) The massage therapy establishment shall only operate during the business hours established on the massage therapy establishment license. In no case shall a massage therapy establishment be open or operate between the hours of midnight and 6:00 a.m.
- (d) An operator, employee, or independent contractor of a massage therapy establishment shall not possess nor consume alcoholic liquor or cereal malt beverage upon the massage therapy establishment premises.
- (e) A patron shall not possess or consume, or be permitted to possess or consume, alcoholic liquor or cereal malt beverage upon the massage therapy establishment premises. Provided that, if the massage therapy establishment premises is accessory to a different primary commercial use, including but not limited to a health or fitness club, spa, or salon, a patron shall not be permitted to consume nor possess alcohol in the portion of the premises where massage therapy occurs. As used in this subsection, "that portion" shall mean physical, visual and audible separation by permanently installed walls and doors between the area where massage therapy occurs and the area where

alcoholic beverages or cereal malt beverages are possessed, sold or consumed.

- (f) Each operator, employee and independent contractor at a massage therapy establishment shall wear clean clothing that covers the person's chest, buttocks and genital areas. Such clothing shall not be transparent or diaphanous.
- (g) A patron's pubic region, genitals, perineum, anal region, and/or the female breast must be covered at all times by opaque towels, sheets, cloths or undergarments when in presence of an operator, massage therapist or employee.
- (h) Any contact by an operator, employee or independent contractor with a patron's pubic region, genitals, perineum, and/or anal region is prohibited.
- (i) Patrons shall be provided clean, laundered sheets and towels. Such items shall be laundered after each use and stored in a sanitary manner.
- (j) Wet and dry heat rooms, showers, and other bathing compartments, and toilet rooms must be thoroughly cleaned and sanitized each day the massage therapy establishment is in operation. Bathtubs or individual soaking areas must be thoroughly cleaned and sanitized after each use.
- (k) Each massage therapy establishment shall keep and maintain on the premises a current register of all massage therapists who operate on the premises. The register shall include each massage therapist's name, residential address, telephone number, a copy of the massage therapist's city-issued license and a copy of government-issued photo identification. Such register shall be open to inspection during business hours by any employee of the Riley County Police Department.
- (l) Each massage therapy establishment shall keep and maintain on the premises a daily register of each patron's appointment time and massage therapist provider. The register shall include each patron's name, residential address, telephone number, and for a minor patron, parental or legal guardian authorization. Such register shall be open to inspection during business hours by any employee of the Riley County Police Department, and must be kept on the premises for one year from the date of each daily register.
- (m) An operator, employee or independent contractor shall not place, publish, or distribute, or cause to be placed, published or distributed, any advertisement offering or suggesting the availability of any service which is either prohibited or not authorized by the license or under this article.
- (n) No person shall reside, inhabit or otherwise sleep overnight at a massage therapy establishment. Provided that, if the establishment is located in the massage therapist's residence, in compliance with this article, no person shall be permitted to reside, inhabit or otherwise sleep overnight in that portion of the residence that is devoted to the practice of massage therapy.
- (o) No operator, employee or independent contractor shall permit the provision of, offer to provide, or provide any service with the intent to arouse or gratify the sexual desires of any person.

- (p) The massage therapy establishment license issued under the provision of this article must be displayed at all times in an open and conspicuous place in the massage therapy establishment.

Sec. 19-76. Massage therapy establishments as home occupation.

It shall be unlawful to establish a massage therapy establishment within a residential building unless the massage therapy establishment meets all of the following requirements:

- (a) The licensed massage therapist occupies the dwelling unit either as an owner or a tenant with a written lease;
- (b) The massage therapy establishment complies, upon application and during the license term, with the regulations related to home occupations in the zoning regulations and other adopted city codes;
- (c) The massage therapy establishment does not employ any person, unless they reside in the dwelling unit, as required by the zoning regulations; and,
- (d) The massage therapy establishment complies, upon application and during the license term, with the requirements of this article.

Secs. 19-77—19-80. Reserved.

Section 4: That Chapter 19 of the Code of Ordinances of the City of Manhattan, Kansas, is hereby amended by adding new Division 3 to Article III, which shall be titled and read as follows:

Division 3. Massage Therapists.

Sec. 19-81. Massage Therapist License Required.

- (a) It shall be unlawful for a person to provide off-site massage therapy, or to provide massage therapy at a massage therapy establishment, unless such person has a valid massage therapist's license issued by the city. Provided, however, a massage therapist license is not required for a student enrolled in a massage therapy program at an accredited institution during the time such student is completing a clinical requirement for graduation and is practicing massage therapy while under the direct supervision of a massage therapist who holds a valid license under this article. Direct supervision requires the presence of the city-licensed massage therapist to be on the same premises as the student providing massage therapy services.
- (b) A massage therapist license is valid for a period of two (2) years from the date of issuance, unless it is terminated earlier pursuant to this article.

Sec. 19-82. Application for massage therapist license.

- (a) The application for a massage therapist license shall be submitted on the form provided by the city. An application shall not be considered complete until all the information has been provided on the city's forms and the application and criminal background check fees have been paid to the city.

- (b) The application fee for a massage therapist license shall be seventy five dollars (\$75). The applicant shall also pay to the city the cost of the city's criminal background investigation. The criminal background investigation fee shall be waived if the city has conducted a criminal background investigation on the applicant for a license issued pursuant to this article within the past thirty (30) days. The fees are non-refundable.
- (c) The application for a massage therapist license shall set forth the exact nature of the services to be provided, including whether the massage therapist will provide off-site massage therapy and the name and address of each massage therapy establishment within the city limits at which the massage therapist will provide massage therapy services.
- (d) The application shall include the following information for the applicant massage therapist:
 - (1) Name, residential address and telephone number;
 - (2) Evidence that the applicant is at least eighteen (18) years old by providing a copy of a current state- or federal-issued form of photo identification;
 - (3) Business, occupation, or employment of the applicant for the three (3) years immediately preceding the date of application;
 - (4) A statement made under oath as to whether the applicant has had a massage therapy establishment license or massage therapist license denied, suspended or revoked, or has surrendered such a license in lieu thereof, in the city or in any other state or city within the preceding ten (10) years; and
 - (5) Information and authorization necessary to perform a criminal background investigation on the applicant, on a separate form provided by the city.
- (e) If a license is issued upon the application, the licensee must provide any changes to the information on the application at least fourteen (14) days prior to the effective date of the change. The city clerk shall review the change in information for compliance with this article and notify the licensee whether the change is approved or denied.

Sec. 19-83. Educational and Practical Requirements for Massage Therapists.

Any person who engages or intends to engage in massage therapy for any consideration whatsoever must provide, for a license application other than a renewal application, proof of compliance with the educational requirements or, if the license application is submitted within sixty (60) days of the effective date of this ordinance, proof of compliance with the substitute practical requirements, as follows:

- (a) Compliance with educational requirements, evidenced with one or more of the following documents:

- (1) Proof the applicant has sat for and passed the Massage and Bodywork Licensure exam of the Federation of State Massage Therapy Boards (MBLEx); or
 - (2) Proof the applicant has sat for and passed the National Certificate of Therapeutic Massage and Bodywork exam (NCTMB) prior to February 1, 2015; or
 - (3) An official transcript showing the applicant has successfully completed a minimum of five hundred instructor taught classroom hours within a recognized massage therapist school; or
 - (4) Proof of one hundred fifty credit hours of education in a massage therapy program from an accredited institution or massage therapist school, at least twelve hours of continuing education units in the last five years, and membership in a nationally recognized massage therapy association.
- (b) If a license application is submitted within sixty (60) days of the effective date of this ordinance, the applicant may submit documentation in accordance with subsection (a), or, at the applicant's option, all of the following documents to prove compliance with substitute practical requirements:
- (1) A sworn statement from the applicant, on a form provided by the city, stating that the applicant is engaged in the practice of massage therapy upon the date of application and that the applicant has been continuously engaged in the practice of massage therapy, for a minimum of ten hours each week, within the five years immediately preceding the date of application;
 - (2) A sworn statement from a city-licensed massage therapist, on a form provided by the city, stating that the applicant is engaged in the practice of massage therapy upon the date of application and that the applicant has been continuously engaged in the practice of massage therapy, for a minimum of ten hours each week, within the five years immediately preceding the date of application; and,
 - (3) The applicant provides at least one additional form of documentation that the applicant has practiced massage therapy for the preceding five years, including, but not limited to tax returns, gross tax receipts, or monthly client receipts.

If such license is issued with substitute practical requirements, the licensee shall be entitled to renew such license if the licensee complies with Section 19-84 and the other requirements of this article. Provided that, if the license based upon substitute practical requirements, expires or is terminated, the licensee must meet the educational requirements set forth in section (a) upon re-application.

Sec. 19-84. Continuing education required for renewal of a valid massage therapist license.

Upon continuous renewal of an existing, valid massage therapist license, the massage therapist applicant shall provide proof with the renewal application that he or she has received a minimum of twelve (12) hours (50 minutes per hour) of

professional massage therapy continuing education offered through an accredited institution, massage therapist school, or nationally recognized massage therapy association. Continuing education credit will be awarded for each hour of training completed in the theory and clinical application of massage, clinical business practices, hygiene, record keeping, professional ethics, and other similar courses.

Sec. 19-85. Issuance of massage therapist license.

Upon receiving a complete license application, and following the completion of the applicant's criminal background investigation by the city, the city clerk shall issue a massage therapist license if the applicant meets the requirements of this article. Provided that, the city clerk shall not issue a massage therapist license if any of the following conditions exist:

- (a) The applicant:
 - (1) Is younger than eighteen (18) years of age;
 - (2) Is a registered sex offender;
 - (3) Has, within the past five years immediately preceding the date of application, been convicted of any felony or any crime involving moral turpitude;
 - (4) Made any false, misleading, or fraudulent statement of fact in the license application or in any document required by the City in conjunction therewith; or,
 - (5) Has had a massage therapy establishment or massage therapist license or permit denied, revoked or suspended, or has voluntarily surrendered such permit or license in lieu of revocation or suspension, by the city or by any other state or local jurisdiction, within ten (10) years prior to the date of application.
- (b) For any application other than a renewal application, the applicant does not meet the educational or substitute practical requirements set forth in Sec. 19-83. For a renewal application, the applicant does not meet the continuing education requirements set forth in Sec. 19-84.

Sec. 19-86. Massage therapist regulations.

The massage therapist shall comply with the following regulations:

- (a) A massage therapist shall not violate any applicable provision of this article, including but not limited to any regulation pertaining to a massage therapy establishment.
- (b) A massage therapist shall not provide massage therapy on any patron between the hours of midnight and six (6) a.m.
- (c) A massage therapist shall not consume any alcoholic or cereal malt beverages while providing massage therapy.
- (d) While providing massage therapy pursuant to this article, a massage therapist shall wear clean clothing that covers the person's chest, buttocks and genital areas. Such clothing shall not be transparent or diaphanous.
- (e) A massage therapist shall ensure that a patron's pubic region, genitals, perineum, anal region, and the female breast must be covered at all times by

opaque towels, sheets, cloths or undergarments, when in the presence of the massage therapist.

- (f) A massage therapist shall not touch or make contact with a patron's pubic region, genitals, perineum, and/or the anal region.
- (g) A massage therapist shall not provide or permit any massage therapy to be provided to a patron under the age of sixteen (16) years old, unless the parent or legal guardian has authorized the massage therapy in writing, and the parent or legal guardian is present while the massage therapy is provided. "Present" means that the parent or legal guardian is physically present within the massage therapy establishment, or in the case of off-site massage therapy, within the same premises as the minor.
- (h) A massage therapist shall not provide or permit any massage therapy to be provided to a patron aged sixteen or seventeen years old, unless the patron's parent or legal guardian authorizes the massage therapy in writing.
- (i) A massage therapist shall not place, publish, distribute or cause to be placed, published or distributed, any advertisement offering or suggesting the availability of any service which is either prohibited or not authorized by the license or under this article.
- (j) A massage therapist shall not permit the provision, offer to provide or provide to any patron any service with the intent to arouse or gratify the sexual desires of any person.
- (k) A massage therapist shall maintain a contemporaneous daily register of the massage therapist's patrons for the day. The daily register shall include each patron's appointment time, name, residential address, telephone number, and in the case of a minor patron, parental or legal guardian authorizations. The daily register shall also note the address at which the massage therapist provided the patron's massage therapy. The massage therapist shall keep the daily register for one (1) year from the date, and must promptly provide the register to an employee of the Riley County Police Department, upon receiving a request during business hours.
- (l) A massage therapist must display his or her license at all times, as follows:
 - (1) In an open and conspicuous place in any massage therapy establishment where the massage therapist performs massage therapy; and,
 - (2) In the case of off-premises massage therapy, the massage therapist must carry his or her license to the patron's premises, and display the license upon the patron's request.

Section 5. This ordinance shall be published in the official city newspaper and shall become effective on August 1, 2019.

**PASSED BY THE GOVERNING BODY OF THE CITY OF MANHATTAN, KANSAS,
THIS 16TH DAY OF APRIL, 2019.**

Michael L. Dodson, Mayor

ATTEST:

Gary S. Fees, MMC, City Clerk