

ORDINANCE NO. 2552

AN ORDINANCE ADOPTING REVISED CHAPTER 5.15, RELATING BUSINESS LICENCES AND REGULATIONS FOR MASSAGE ESTABLISHMENTS, OF THE GARDNER MUNICIPAL CODE.

WHEREAS, the Governing Body of the City of Gardner, Kansas deems it advisable to revise and amend Chapter 5.15 of the Gardner Municipal Code with regard to the business licensing and regulation of massage establishments within the City in accordance with the standards identified within this Ordinance.

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

SECTION 1: Chapter 5.15, Massage Establishments, of the Code of the City of Gardner, Kansas, shall be amended to read as follows:

Chapter 5.15
MASSAGE ESTABLISHMENTS

5.15.010 Definitions.

Words and terms used in this chapter shall have meanings as follow unless the context otherwise requires:

- A. "Employee" means any person, other than massage therapists, who renders any service to a permittee under this chapter, who receives compensation from the permittee or patron.
- B. "In-office massage" means massage that is conducted on the business premises of a massage client and is limited to massage therapy applied only above the massage client's waist.
- C. "Massage" (or "massage therapy") means any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external soft parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance with or without such supplementary aids as rubbing alcohol, liniment, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice. The regulation of massage in this chapter includes, but is not limited to, subspecialties of massage such as acupressure, aromatherapy, cupping, hot stone, reiki, reflexology, Rolfing, and trigger point. Massage as defined herein does not include the touching in any fashion of the patron's genitals, pubic region, perineum, anus or anal region, and the area of the female breast that includes the areola and nipple.

D. "Massage establishment" means any establishment having a place of business where any person, firm, partnership, association, or corporation engages in or carries on or permits to be engaged in or carried on any of the activities mentioned in subsection (D) of this section for compensation; provided that, massage establishment does not include premises in which in-office massages are performed in accordance with this chapter.

E. "Massage therapist" means any person who, for any consideration whatsoever, engages in the practice of massage as defined in this chapter.

F. "Patron" means any person over 18 years of age who utilizes or receives the massage therapy services of any establishment subject to the provisions of this chapter and under such circumstances that it is reasonably expected that he or she will pay money or give any other consideration therefor; provided that, a person under the age of 18 may utilize or receive massage therapy from a licensed massage therapist if accompanied by a parent or legal guardian and a parent or legal guardian has authorized the provision of such massage therapy in writing.

G. "Recognized school" means any school or institution of learning that is state accredited, state board certified or a National Certification Board for Therapeutic Massage & Bodywork (NCBTMB) approved school which has for its purpose the teaching of the theory, method, profession, or work of massage, and requires a resident course of study not less than 500 hours, of which 150 hours must be comprised of professional hands-on experience over no less than six months from graduation, before the student shall be furnished with a diploma or certificate of graduation from such school or institution of learning following the successful completion of such course of study or learning.

H. "Specified anatomical areas" means human genitals, pubic region, buttock or female breast or breasts or any combination of the foregoing.

I. "Table shower" means an activity in which a patron lies upon a table and is washed by an attendant.

5.15.020 Permit – Required.

No person, firm, partnership, association or corporation shall operate a massage establishment as defined in this chapter without first having obtained a permit therefor issued by the City Clerk or his or her designee of this City. It shall be unlawful to conduct such a business unless the license issued is current, unrevoked and not suspended. A separate permit shall be required for each and every separate place of business conducted by any one permittee; such permit shall be valid only from January 1st to December 31st of each calendar year.

5.15.030 Permit – Application – Fees.

A. Every applicant for a permit to maintain, operate or conduct a massage establishment shall file an application with the City and pay an annual filing fee as set by the Governing Body by resolution.

B. The application for a permit to operate any such establishment shall set forth the exact nature of the services to be provided, the proposed place of business, and facilities therefor, and name, address, and telephone number of each applicant, including stockholders holding more than ten percent (10%) of the stock of the corporation, any partner, when a partnership is involved, and any manager.

C. In addition to the foregoing, any applicant for a permit shall furnish the following information:

1. Written proof that the applicant is at least 18 years old;
2. Two portrait photographs at least two inches by two inches taken within the preceding two (2) years and fingerprints; provided that, once an applicant has submitted fingerprints, such applicant shall not have to submit fingerprints upon renewal applications for such applicant;
3. Business, occupation, or employment of the applicant for the three years immediately preceding the date of application;
4. The massage establishment business license history of the applicant, whether such person, in previously operating in this or another city or state under license, has had such license revoked or suspended, the reason therefor, and the business activity or occupation subsequent to such action of suspension or revocation;
5. Any criminal convictions, except minor traffic violations, fully disclosing the jurisdiction in which convicted and the offense for which convicted and the circumstances thereof;
6. In the case of applicants who intend personally to provide in-office massage or massage therapy, the applicant must also apply for and receive a massage therapist license as provided for in section 5.15.160 of this chapter;
7. Authorization for the City, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and qualifications of the applicants for the permit.

5.15.040 Massage Establishment Permit Application – Processing and Issuance.

A. After the filing of an application in the proper form, the City Clerk or his or her designee shall examine the application for completeness, and after such examination, shall immediately transmit copies of the application to the Chief of Police, or his or her designee, and the Director of Business and Economic Development, or his or her designee.

B. The Chief of Police, or his or her designee, shall be responsible to investigate such application to determine whether the information contained in the application is accurate and whether the applicant is qualified to be issued a massage establishment permit. The Chief of Police shall report the results of the investigation to the City Clerk not later than twenty one (21) days from the date the application is received by the City Clerk, unless good cause is shown for the extension of such time period.

C. The Director of Business and Economic Development, or his or her designee, shall be responsible to determine whether the premises where the massage therapy business will be conducted complies with the requirements and meets the standards of the City's applicable business licensing, health, zoning, and building ordinances. The standards for premises set forth in section 5.15.050 of this chapter must be met in their entirety prior to the first day the premises are open for business. The Director of Business and Economic Development, or his or her designee, shall report the results of his or her investigation to the City Clerk not later than twenty one (21) days from the date the application is received by the City Clerk, unless good cause is shown for the extension of such time period.

D. Upon receipt of the above-referenced reports from the Chief of Police, or his or her designee, and the Director of Business and Economic Development, or his or her designee, or twenty one (21) days following filing and acceptance of the completed application, unless good cause is shown for the extension of such time period, whichever occurs first, the City Clerk shall grant or deny the permit consistent with the notification requirements established in this chapter or otherwise provided by law; provided that, the permit shall be issued or denied within forty five (45) days from the date of filing of a completed application with the City Clerk's office. The City Clerk shall issue a permit for a massage establishment, unless the City Clerk, or his or her designee, in investigation of the application or in consideration of the reports from the Chief of Police or the Director of Business and Economic Development, or their respective designees, finds that:

1. The correct permit fee has not been tendered to the City, and, in the case of a check or bank draft, honored with payment upon presentation;

2. The operation, as proposed by the applicant, if permitted, would not comply with all applicable laws, including, but not limited to, the City's building, zoning and health regulations;

3. The applicant, if an individual; or any of the stockholders holding more than ten percent (10%) of the stock of the corporation, any of the officers and directors, if the applicant is a corporation; or any of the partners, including limited partners, if the applicant is a partnership; and the manager or other person principally in charge of the operation of the business, have been convicted of received diversion for, or entered a plea for pursuant to a suspended imposition of sentence on:

- a. a person felony, as defined by Kansas law, in the twenty (20) years immediately preceding the date of the application;
- b. a non-person felony, as defined by Kansas law, in the ten (10) years immediately preceding the date of application;
- c. an offense involving sexual misconduct with children;
- d. obscenity;
- e. promoting prostitution, operating a brothel, or equivalent conviction;
- f. solicitation of a lewd or unlawful sexual act;
- g. prostitution;
- h. rape, sodomy, sexual assault, or other unlawful sexual act as defined by K.S.A. 22-5501 and amendments thereto;
- i. pandering or similar related sexual or indecent offense; or,
- j. any violation of this chapter or other state law or municipal ordinance arising out of the applicant's operation, ownership, employment, or participation in a massage establishment or provision of massage therapy services in the five (5) years immediately preceding the date of the application.

4. The applicant has knowingly made any false, misleading, or fraudulent statement of fact in the permit application or in any document required by the City in conjunction therewith;

5. The applicant has had a massage establishment, as defined in this chapter, or other similar permit or license denied, revoked, or suspended for any of the above causes by the City or any other state or local agency within five years prior to the date of the application;

6. The applicant, if an individual; or any of the officers and directors, if the applicant is a corporation; or any of the partners, including limited partners, if the applicant is a partnership; and the manager or other person principally in charge of the operation of the business is not over the age of 18 years;

7. The applicant, if an individual; or any of the officers and directors, if the applicant is a corporation; or any of the partners, including limited partners, if the applicant is a partnership; and the manager or other person principally in charge of the operation of the business is currently engaged in or currently holds a permit for adult entertainment under the provisions of GMC Chapter 5.10, or such similar permit or license issued by a state or other municipality.

8. The manager or other person principally in charge of the operation of the business would be ineligible to receive a permit under the provisions of this chapter.

E. Any permit issued under the provisions of this chapter shall at all times be displayed by the permittee in an open and conspicuous place on the premises where the permitted business is conducted.

F. Any applicant aggrieved by denial of a massage establishment permit application may seek judicial review pursuant to K.S.A. 60-2101(d), and amendments thereto.

5.15.050 Inspection; Facilities necessary.

A. No permit to conduct a massage establishment shall be issued unless an inspection by the Business and Economic Development Director or his or her designee determines that the establishment complies with each of the following minimum requirements:

1. The walls shall be clean and painted with washable, mold-resistant paint in all rooms where water or steam baths are given. Floors shall be free from any accumulation of dust, dirt or refuse. All equipment used in the business's operation shall be maintained in a clean and sanitary condition. Towels, linen, and items for personal use of operators and patrons shall be clean and freshly laundered. Towels, cloths, and sheets shall not be used for more than one patron. Heavy, white paper may be substituted for sheets; provided, that such paper is changed for every patron. No service or practice shall be carried on within a cubicle, room,

booth, or any area within any permitted establishment which is fitted with a door capable of being locked.

2. Toilet facilities shall be provided in convenient locations and in conformance with applicable City ordinance and building standards, and state and federal law and regulations.

3. Lavatories or washbasins provided with both hot and cold running water shall be installed in either the toilet room or a vestibule. Lavatories or washbasins shall be provided with soap in a dispenser and with sanitary towels.

B. The Business and Economic Development Director or his or her designee shall certify that the proposed massage establishment complies with all of the requirements of this chapter and shall give or send such certification to the City Clerk; provided, that nothing contained in this section shall be construed to eliminate other requirements of statute or ordinance concerning the maintenance of premises, nor to preclude authorized inspection thereof.

5.15.060 Inspections – Immediate right of entry.

A. The Police Department and Business and Economic Development Department may from time to time make an inspection of each permitted establishment in this City for the purpose of determining that the provisions of this chapter are complied with.

B. Such inspections shall be made at reasonable times and in a reasonable manner.

C. It is unlawful for any permittee to fail to allow such inspection officer immediate access to the premises or to hinder such officer in any manner; provided, that any failure on the part of any permittee or employee to grant immediate access to such inspector shall be grounds for the revocation or suspension of any business establishment, massage therapist, or employee permit.

5.15.070 Operation regulations.

A. The operation of any massage establishment shall be subject to the following regulations:

1. Hours. Such business shall be closed and operations shall cease between the hours of 12:00 midnight and 6:00 a.m. each day;

2. Separation of Patrons. It is unlawful for patrons to receive treatment in the same room or the same quarters at the same time; provided that, this regulation shall not apply to the provision of in-office massage;

3. Danger to Safety and Health. No service shall be given which is clearly dangerous or harmful in the opinion of the Chief of Police or the Director of Business and Economic Development, or their respective designees, to the safety or health of any person, and after such notice in writing to the permittee from said officials;

4. Alcoholic Beverages. No alcoholic beverages or cereal malt beverages, nor the consumption thereof, shall be allowed, permitted, or suffered to be done in or upon any premises permitted under the provisions of this chapter; provided that, this restriction shall not apply to accessory home occupations except for the portion of such premises where massage therapy occurs, has been inspected, and permitted pursuant to this chapter and pursuant to the provisions the Gardner Land Development Code, GMC Title 17, regarding accessory home occupations;

5. Conduct of Premises. All permittees and operators permitted under the provisions of this chapter shall at all times be responsible for the conduct of business on their permitted premises and for any act or conduct of any employees or massage therapists which constitutes a violation of the provisions of this chapter; any violation of the City, state, or federal laws committed on the permitted premises by any such permittee, manager, operator, employee, or massage therapist affecting the eligibility or suitability of such person to hold a license or permit may be grounds for suspension or revocation of same;

6. Every portion of a permitted establishment, including appliances and personnel, shall be kept clean and operated in a sanitary condition;

7. All employees shall be clean and wear clean outer garments which use is restricted to the permitted establishment, except for the provision of in-home massage therapy as set forth in this chapter; provisions for a separate dressing room for each sex must be available on the premises with individual lockers for each employee, except for the provision of in-home massage therapy as set forth in this chapter;

8. All operators, managers, massage establishment permit holders, employees, and massage therapists must be modestly attired; diaphanous, flimsy, transparent, form-fitting, or tight clothing is prohibited; clothing must cover employees', operators', managers', massage establishment permit holders', and massage therapists' buttocks, genitals, pubic areas, and chests at all times;

9. The specified anatomical areas of patrons must be covered by towels, cloths, or undergarments when in the presence of a massage establishment permit holder, manager,

operator, employee, or massage therapist; any contact with a patron's genital area, genitals, pubic region, perineum, anus or anal region, and the area of the female breast that includes the areola and nipple is strictly prohibited;

10. All permitted establishments, when applicable, shall be provided with clean, laundered sheets and towels in sufficient quantity and shall be laundered after each use thereof and stored in an approved, sanitary manner;

11. Wet and dry heat rooms, shower compartments, and toilet rooms shall be thoroughly cleaned each day the business is in operation; bathtubs shall be thoroughly cleaned after each use;

12. Table showers are strictly prohibited.

B. The City Clerk, Chief of Police, or the Director of Business or Economic Development may, after a public hearing, make and enforce reasonable rules and regulations not in conflict with, but to carry out, the intent of this chapter.

5.15.080 Supervision.

A permittee shall have the premises supervised at all times when open for business. Any business rendering massage services shall have one person who qualifies as a massage therapist on the premises at all times while the establishment is open. The permittee and/or a properly permitted manager shall personally supervise the business, and shall not violate or permit others to violate any applicable provisions of this chapter. The violation of any such provisions by any agent, massage therapist, or employee of the permittee shall constitute a violation by the permittee.

5.15.090 Employee and patron registers.

Current and daily registers shall be kept of employees and patrons as follows:

A. All operators permitted under the provisions of this chapter shall keep and maintain on their premises a current register of all their employees and massage therapists showing such employee's or massage therapist's name, home address, and containing a copy of government-issued identification of each such person, and for massage therapists, each massage therapist's license number and a copy of the his or her massage therapist license. Such register shall be open to inspection at all reasonable times by any authorized City official, including but not limited to the Police Department, the Business and Economic Development Department, the Chief of Police, the Director of Business and Economic Development, and the City Clerk, or their respective designees.

B. Every person who engages in or conducts a permitted establishment shall keep a daily register of all patrons, with first and last names, addresses, hours of arrival and departure, the rooms or cubicles assigned, and the first and last name of the employee who performed the massage. The daily register shall at all times during business hours be subject to inspection by authorized City officials, including but not limited to the Police Department, the Business and Economic Development Department, the Chief of Police, the Director of Business and Economic Development, and the City Clerk, or their respective designees, and shall be kept on file for one year.

5.15.100 Advertising.

No person, firm, partnership, association or corporation, including but not limited to an establishment granted a permit under provisions of this chapter shall place, publish or distribute, or cause to be placed, published or distributed, any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective patrons that any service is available other than those services as described in GMC 5.15.010, or that employees or massage therapists are dressed in any manner other than described in GMC 5.15.070, nor shall any establishment indicate in the text of such advertising that any service is available other than massage therapy services described in GMC 5.15.010.

5.15.110 Persons under Age 18 years.

A. No permittee shall perform or permit any massage therapy to be provided to a person under the age of 18; provided that, a person under the age of 18 may utilize or receive massage therapy from a licensed massage therapist if accompanied by a parent or legal guardian and a parent or legal guardian has authorized the provision of such massage therapy in writing.

B. Persons under the age of 18 years shall be prohibited on the premises of a massage establishment, subject to the provisions of this section. No person shall permit any person under the age of 18 years old to come or remain on the premises of any permitted business establishment, as a massage therapist, employee, or patron, unless such person is on the premises on lawful business, is a minor under the immediate supervision and control of their parent or legal guardian who is a patron, or as a patron subject to the provision of subsection A of this section; provided that, this restriction shall not apply to accessory home occupations except for the portion of such premises in which massage therapy occurs, has been inspected, and permitted pursuant to this chapter and subject to the provisions contained within the Gardner Land Development Code, GMC Title 17, regarding accessory home occupations.

5.15.120 Restriction of business to premises.

A. All business or activity provided for under this chapter shall be conducted and performed on the commercial premises of a licensed massage establishment, subject to the provisions of this subsection.

B. Licensed massage therapists who own, operate, or are employed by a licensed massage therapy establishment within the corporate limits of the City, at the direction of a duly licensed physician, physical therapist, occupation therapist, kinesiologist, or chiropractor, may perform massage therapy services on behalf of physically incapacitated patients in such patient's home, residence or other designated place, or such licensed massage therapist may render such treatment to persons who are bedfast or are so physically incapacitated that it is impractical to provide same to such persons at a permitted location.

C. Licensed massage therapists may perform their services in the therapist's home or residence provided that the therapist's home is licensed as a massage establishment and provided that any place where massage therapy is performed is subject to the inspection as set forth in sections 5.15.050 and 5.15.060 of this chapter, operated in accordance with the regulations set forth in section 5.15.070, and subject to the provisions contained within the Gardner Land Development Code, GMC Title 17, regarding accessory home occupations.

D. Licensed massage therapists, with a licensed massage therapy establishment within the corporate limits of the City, may perform in-office massage on the non-permanent commercial office premises of the massage therapist's client(s) in the course or scope of a health and wellness program, promotion, health risk assessment or the like sponsored by an unrelated business enterprise or its insurer, third-party health or medical provider, or the like.

5.15.130 Applicability to existing massage establishments.

The operators of any existing massage establishment are required to comply with all provisions of this chapter within on or before January 1, 2018, subject to the exceptions to the educational, experience and certification requirements for the issuance of massage therapist licenses set forth in section 5.15.170 of this chapter.

5.15.140 Permit – Suspension or revocation of massage establishment permit.

Rules and regulations pertaining to revocation and suspension of business permits shall be as follows:

A. Any permit issued for a massage establishment may be revoked or suspended by the Governing Body after notice and a public hearing before the Governing Body where it is found that:

1. The massage establishment, its permittee(s), managers, massage therapists, or employees have violated any of the provisions of this chapter;
2. The permittee, any massage therapist employed by, associated with, performing services on behalf of, or performing massages in permittee's massage establishment, or any employee of the permittee has been convicted of, diverted on, or entered a plea agreement for a suspended imposition of sentence for any offense found in GMC 5.15.040(D) or 5.15.180(A), and the permittee has actual or constructive knowledge of the violation or conviction or in any case; or,
3. The permittee or licensee refuses to permit any duly authorized City employee or official access to inspect the premises or the operations conducted therein.

B. The Governing Body, or its designee, before revoking or suspending any permit, shall give the permittee at least 10 days' written notice of the specific charges against the permittee and the opportunity for a public hearing before the Governing Body, at which time the permittee may present evidence bearing upon the question. In such cases, the charges shall be specific and in writing.

C. Any person aggrieved by the suspension or revocation of a permit may seek judicial review pursuant to K.S.A. 60-2101(d), and amendments thereto.

5.15.150 Massage therapist license; Required.

No person shall perform massage or massage therapy within the City, unless he or she has been issued a valid massage therapist license issued consistent with and subject to the provisions of this chapter; nor shall any person be employed as a massage therapist for any massage establishment subject to the provisions of this chapter unless he or she has been issued a valid massage therapist license by the City pursuant to the provisions of this chapter.

5.15.160 Massage therapist license; Application; Fees.

A. Any person who desires to perform massage or in-office massage or to perform any massage or massage therapy services in a massage establishment, as defined in this chapter, shall file a written application with the City Clerk and pay an annual filing fee to the City Clerk as set by the Governing Body by resolution for both a new application or for the annual renewal application. In the case of a renewal, no massage therapist shall be privileged to provide massage therapy or massage services until an application for renewal has been approved. After a massage therapist license has expired a new application requiring compliance with all current educational, certification, and testing standards is required. A massage therapist license shall be valid only from

January 1st to December 31st of each calendar year regardless of the date of issuance. The application fee shall cover the cost of processing the application, including the current KBI fingerprint fee. Only one massage therapy license shall be required for a massage therapist regardless of the activity or activities the therapist engages in as permitted by this chapter.

B. The application for massage therapist license shall contain the following:

1. Name, address and telephone number;
2. Two passport photographs at least two inches by two inches;
3. Applicant's weight, height, color of hair and eyes, and fingerprints; provided that, once an applicant has submitted fingerprints, he or she shall not be required to submit new fingerprints for any timely submitted renewal application;
4. Written evidence that the applicant is at least 18 years old;
5. Business, occupation, or employment of the applicant for the three years immediately preceding the date of application;
6. Whether such person has ever been convicted of or received diversion or a suspended imposition of sentence for any crime except minor traffic violations; if any person mentioned in this subsection has been so convicted, diverted or issued a suspended imposition of sentence, a statement must be made giving the place and court in which the conviction was obtained and the sentence imposed as a result of such conviction;
7. The position or function the applicant is being hired to perform within such establishment, if the applicant is intending to serve in any position other than as a massage therapist;
8. Proof of the educational, testing, certification and continuing education requirements set forth in section 5.15.170 of this chapter;
9. Authorization for the City, its agents, and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and qualifications of the applicant for the permit.
10. Verification of employment or intended employment by signature of the permittee or manager of a licensed massage establishment or a signed statement that the applicant has been issued a massage establishment permit.

5.15.170 Education requirements; Testing and certification requirements; Continuing education requirements; Massage therapist.

To be eligible for issuance of a massage therapist license, any applicant, including an applicant for a massage establishment permit who engages or intends to engage in the practice of massage as defined in this chapter shall, upon making application for a massage therapist license must submit all of the following:

- A. An application on a form provided by the City Clerk.

- B. The name and address of the recognized school attended, the date attended, a copy of a certified transcript, and a copy of the diploma or certificate of graduation awarded the applicant showing the applicant has successfully completed not less than 500 hours of instruction in the theory, method or practice of massage, of which not less 150 hours must be comprised of professional hands-on experience over no less than six months from graduation. The required curriculum must include the subjects of anatomy, physiology, kinesiology, pathology, first aid and hygiene and practical instruction in massage technique. The educational and training requirements required by this chapter may be received from more than one school. Training hours from a school that has its NCBTMB Assigned School Code denied, suspended or revoked will not be accepted.

- C. Acceptable proof that the applicant has passed the 1992 or later National Certification Examination for Therapeutic Massage and Bodywork or the 2007 or later Massage & Bodywork Licensing Examination.

- D. The applicant must also have successfully completed an in-person certification program in American Red Cross first aid and American Heart Association cardiopulmonary resuscitation (CPR), or equivalent programs, and provide current certification.

- E. All licensed massage therapists applying for a renewal license must show proof of compliance with continuing education requirements. Each applicant must show proof that they have received a minimum of twelve (12) hours (fifty minutes per hour) of professional massage continuing education during the preceding twelve-month licensing period. One (1) hour of continuing education credit will be awarded for each hour attendance at programs relating to the theory or clinical application of theory pertaining to the practice of massage to include, but not limited to, clinical business practices, hygiene, record-keeping, medical terminology, professional ethics, business management, human behavior, client interaction and state and local laws that are sponsored by a university, junior college or otherwise found to be acceptable by the Business and

Economic Development Department. The certificate for any on-line continuing education courses must clearly depict the time required to acquire such certificate.

F. Individuals licensed or permitted by the City as massage therapists (or masseurs or masseuses) as of the effective date of this ordinance may renew said permit or license as a massage therapist notwithstanding the failure to satisfy the educational and testing requirements of subsections B and C of this section, provided said individuals:

1. Submit proof of completion of an in-person certification program in American Red Cross first aid and American Heart Association cardiopulmonary resuscitation (CPR), or equivalent programs, and provide certification regarding same on or before submission of a renewal application, within twelve (12) months of the effective date of the ordinance.
2. Show proof of compliance with the continuing education requirements set forth in subsection E of this section, within twelve (12) months of the effective date of the ordinance.
3. Continue to renew such license in a timely fashion so that there are no lapses in active licensure status. If the individual's active massage therapist license lapses, the individual will be required to apply for a new massage therapist license and meet all of the qualifications, education requirements, testing, and certifications set forth in this section and in this chapter.

5.15.180 Massage therapist license – Issuance.

The City Clerk shall issue a massage therapy license within 21 days following application unless he or she finds that:

A. The applicant for a massage therapist license has been convicted of:

1. a person felony, as defined by Kansas law, in the twenty (20) years immediately preceding the date of the application;
2. a non-person felony, as defined by Kansas law, in the ten (10) years immediately preceding the date of application;
3. an offense involving sexual misconduct with children;
4. obscenity;
5. promoting prostitution, operating a brothel, or equivalent conviction;
6. solicitation of a lewd or unlawful sexual act;

7. prostitution;
8. rape, sodomy, sexual assault, or other unlawful sexual act as defined by K.S.A. 22-5501 and amendments thereto;
9. pandering or similar related sexual or indecent offense; or,
10. any violation of this chapter or other state law or municipal ordinance arising out of the applicant's operation, ownership, employment, or participation in a massage establishment or provision of massage therapy services in the five (5) years immediately preceding the date of the application.

B. The applicant has knowingly made any false, misleading, or fraudulent statement of fact in the permit application or in any document required by the City in conjunction therewith;

C. That the correct permit fee has not been tendered to the City, and in the case of a check or bank draft, honored with payment upon presentation;

D. The applicant has not successfully completed the education, examination, first aid certification, course of study or learning from a recognized school, or the continuing education requirements or otherwise failed to comply with the provisions of section 5.15.170 of this chapter.

E. That the applicant is not legally present in the United States or is not legally authorized to work in the United States.

F. The applicant is currently engaged in or currently holds a permit for adult entertainment under the provisions of GMC Chapter 5.10, or such similar permit or license issued by a state or other municipality.

5.15.190 Massage therapist license – Revocation.

Massage therapist licenses may be revoked as follows:

A. A massage therapist license that is issued by the City Clerk shall be revoked or suspended after notice and a public hearing before the City Clerk or the City Clerk's designated representative, where it appears that the massage therapist has been convicted of, diverted on, or given a suspended imposition of sentence any offense enumerated in GMC 5.15.180 or for violation of any of the provisions of this chapter or ordinance, including application, license and operation standards and regulations.

B. The City Clerk, before revoking or suspending any massage therapist license, shall give the licensee at least 10 days' written notice of the hearing and specify the alleged violation of this code warranting suspension or revocation, at which hearing the relevant facts regarding the occurrence of the violation or conviction shall be determined.

5.15.200 Identification cards.

A. All or any massage therapists issued a license by the City Clerk under the provisions of this chapter shall, at all times when working in an establishment subject to the provisions of this chapter, performing in-office massage pursuant to the provisions of this chapter, performing in-home massage pursuant to the provisions of this chapter, or performing massage or massage therapy within the City as defined within this chapter have in their possession a valid identification card issued by the City bearing the massage therapist's license number, the massage therapist's physical description, and a photograph of the massage therapist.

B. Such identification cards shall be laminated to prevent alteration; provided, that all persons granted permits under this chapter shall at all times keep their licenses available for inspection upon request of any person who by law may inspect same.

5.15.210 Permits and Licenses – Transfer – Other licenses and fees.

Rules and regulations pertaining to the transfer of permits, other licenses and fees shall be as follows:

A. No massage establishment permits or massage therapist licenses are transferable, separate or divisible, and such authority as a permit or licenses confers shall be conferred only on the permittee or licensee named therein.

B. Any applications made, fees paid and permits obtained under the provisions of this chapter shall be in addition to and not in lieu of any other fees, permits, or licenses required to be paid or obtained under any other ordinance of this City.

5.15.220 Exceptions.

The provisions of this chapter shall not apply to hospitals, nursing homes, sanitariums, or persons holding an unrevoked certificate to practice the healing arts under the laws of this state, persons licensed to practice as a registered professional nurse under the laws of this state, persons licensed to practice as a physical therapist under the laws of this state, or persons working under the direction and supervision of any licensed healing arts practitioner or in any such establishment or in any such establishment; nor shall this chapter apply to barbers or cosmetologists lawfully

carrying out their particular profession or business and holding a valid, unrevoked license or certificate of registration issued by this state.

5.15.230 Violation – Penalty.

Any person, firm, partnership, association or corporation convicted of violating any of the provisions of this chapter shall be deemed guilty of a public offense and shall be fined in any sum not to exceed \$500.00, or be imprisoned not to exceed six months, or be both so fined and imprisoned.

5.15.240 Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this chapter or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof.

SECTION 2: All other ordinances not in conformity herewith are hereby repealed or amended to conform hereto.

SECTION 3: This ordinance shall take effect and be in force after its passage, approval and publication as provided by law on January 1, 2018.

PASSED by the City Council this 21 day of August, 2017.

APPROVED by the Mayor this 21 day of August, 2017.

(SEAL)



CITY OF GARDNER, KANSAS

A handwritten signature in black ink, appearing to read "Chris Morrow", is written over a horizontal line.

Chris Morrow, Mayor

Attest:

A handwritten signature in black ink, appearing to read "Amy Waller", is written over a horizontal line.

Amy Waller, City Clerk

Approved as to form:

A handwritten signature in blue ink, appearing to read "Ryan Denk", is written over a horizontal line.

Ryan Denk, City Attorney