

**ORDINANCE NO. 2599**

**AN ORDINANCE OF THE CITY OF GARDNER, KANSAS AMENDING SECTIONS 5.15.070 AND 5.15.120 OF THE GARDNER MUNICIPAL CODE RELATING TO THE OPERATION REGULATIONS OF MASSAGE ESTABLISHMENTS AND THE RESTRICTION OF BUSINESS TO PREMISES FOR MASSAGE ESTABLISHMENTS**

**WHEREAS**, the City has previously adopted Municipal Code provisions regulating the maintenance, operation and conduct of massage establishments;

**WHEREAS**, the City wishes to amend its Municipal Code regulating the maintenance, operation and conduct of massage establishment relating to the operation regulations of massage establishments and the restriction of business to premises for massage establishments

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

**SECTION ONE:** Section 5.15.070 of the Gardner Municipal Code shall be amended to provide as follows:

**“5.15.030 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 10:00 p.m. and 6:00 a.m. each day provided the hours of operation for in-office massage may be extended on premises having bona fide evening and night shifts;
2. Separation of Patrons. It is lawful 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 of 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."

**SECTION TWO:** Section 5.15.120 of the Gardner Municipal Code shall be amended to provide as follows:

**“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 section.

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 on behalf of clients in clients’ homes or residences or other designated places, or 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 GMC [5.15.070](#), and operated in accordance with the regulations as set forth in Section 5.15.120, and if conducted in a therapist’s home or residence, 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 nonpermanent 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.

**SECTION THREE:** Any ordinance not in conformity herewith is hereby repealed or amended to conform hereto.

**SECTION FOUR:** This ordinance shall take effect and be in force upon its passage by the City Council and publication in the official City Newspaper as required by law.

PASSED by the City Council this 22nd day of January, 2019.

SIGNED by the Mayor this 22nd day of January, 2019.

(SEAL)

CITY OF GARDNER, KANSAS

          
/s/

Steve Shute, Mayor

Attest:

          
/s/

Amy Nasta, City Clerk

Approved as to form:

          
/s/

Ryan B. Denk, City Attorney