

ORDINANCE NO. 19-05

AN ORDINANCE CREATING CHAPTER 119, NORWALK CODE, PROVIDING FOR THE PERMITTING AND REGULATION OF MASSAGE ESTABLISHMENTS AND THERAPISTS, FOR THE CITY OF NORWALK, IOWA

BE IT AND IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORWALK, IOWA:

- Section 1. Purpose.** The purpose of this ordinance is to create Chapter 119, Norwalk Code, providing for the permitting and regulation of massage establishments and massage therapists within the City.
- Section 2. Permitting and Regulation of massage establishments and massage therapists within the City.** The provisions, as set forth in Exhibit A attached hereto, are hereby adopted in its entirety as Chapter 119.
- Section 3. Chapter 177 Amended.** All fees contained in this adopted Chapter 119 of the Norwalk Code are also incorporated into Chapter 177 of the Norwalk Code.
- Section 4. Repealer.** All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.
- Section 6. Severability Clause.** If any section, provision or parts of this ordinance be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of this ordinance as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.
- Section 7. When Effective.** This ordinance shall be in full force and effect upon final passage, approval, and publication as provided by law.

Passed and approved by the City Council of the City of Norwalk, Iowa on the 7th day of March, 2019.

Tom Phillips, Mayor

Attest:

Lindsey Offenburger, City Clerk

First Reading: March 7, 2019

Second Reading: March 7, 2019

Third Reading: March 7, 2019

Clerk's Certificate

I certify that the foregoing was published as Ordinance No. 19-05 on the 21st day of March, 2019.

City Clerk

EXHIBIT A

Chapter 119

MASSAGE ESTABLISHMENTS AND THERAPISTS

- 119.01 Purpose
- 119.02 Definitions
- 119.03 Permit Required
- 119.04 Permit Fee
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119.01 PURPOSE. State of Iowa licensed massage therapists and businesses offering Massage Therapy services perform an important service in addressing the health and well-being of Norwalk residents. Unfortunately, there are businesses that advertise they provide Massage Therapy and/or other therapeutic services, but they engage in various illegal activities, which may include prostitution and/or human trafficking. It is not the intention of this chapter to discourage legitimate, licensed massage therapists or Massage Therapy Businesses from providing their services within Norwalk. The purpose of this chapter is to identify and address businesses that engage in the practice of Massage Therapy without valid licenses and/or are involved in illegal activities. Businesses providing Massage Therapy, but also conducting various types of illegal activity, are harmful to the health, safety, and welfare of the City and negatively impact the Massage Therapy profession. The implementation of this chapter will better enable the City to proactively screen, monitor, and remove businesses that engage in illegal activity.

119.02 DEFINITIONS. For use in this chapter the following terms are defined:

1. "Applicant" means any person, firm, corporation, or other legal entity applying for a Massage Therapy Business Permit.
2. "Employee" means any person who performs Massage Therapy on the premises of a Massage Therapy Business on a full time, part time, or contract basis, regardless of whether the person is considered an Employee, independent contractor, agent, apprentice, trainee, or otherwise.
3. "License" means permission granted by competent authority to exercise a certain privilege that, without such authorization, would constitute an illegal act. The document that confers permission for a person to engage in Massage Therapy shall be issued by the State of Iowa Board of Massage Therapy. Massage Therapy Business Permits shall be issued by the City of Norwalk.
4. "Massage Patron" means any person who receives, or pays to receive, a massage or massage services from a massage therapist for value.
5. "Massage Therapist" means a person licensed to practice the health care service of the healing art of Massage Therapy under Iowa Code.
6. "Massage Therapy" means performance for compensation of massage, myotherapy, massotherapy, bodywork, bodywork therapy, or therapeutic massage, including hydrotherapy, superficial hot and cold applications, vibration and topical applications, or other therapy which involves manipulation of the muscle and connective tissue of the body, excluding osseous tissue, to treat the muscle tonus system for the purpose of enhancing health, muscle relaxation, increasing range of motion, reducing stress, relieving pain, or improving circulation.
7. "Massage Therapy Business" means any business or place of business, including mobile, temporary, and transient businesses, wherein, or on whose behalf, any of the treatments, techniques, or methods of treatment referred to as "Massage Therapy" are administered, practiced, used, given, or applied.
8. "Massage Therapy Permit or Permit" means permission in the form of a certificate granted by the City of Norwalk to engage in the act of Massage Therapy in a Massage Therapy Business within the City.
9. "Permit Holder" means the person or entity that holds or was granted the permission to operate a Massage Therapy Business in the City of Norwalk.

10. "Premises" means the real property, or portion thereof, upon which the Massage Therapy Business is located, including but not limited to, the buildings, grounds, private walkways, parking lots, and parking garages through which the business has access, control, or ownership.

11. "Specified Criminal Activity" means any of the following specified crimes:

- a. Any crime identified in Chapter 709 Iowa Code (2017) - Sexual Abuse, Chapter 710 Iowa Code (2017) - Kidnapping and Related Offenses, or Chapter 710A Iowa Code (2017) - Human Trafficking;
- b. Prostitution, leasing premises for prostitution, pimping, or pandering, as those crimes have been identified in Chapter 725 Iowa Code (2017), or any crime identified in Chapter 726 Iowa Code (2017) - Protection of the Family and Dependent Persons;
- c. Any crime identified in Chapter 728 Iowa Code (2017) - Obscenity;
- d. Any crime that requires sex offender registration pursuant to Chapter 692A Iowa Code (2017) - Sex Offender Registry;
- e. Any crime involving serious injury or death to another person, robbery, burglary, felony theft, fraud, forgery, identity theft, aggravated harassment, or stalking; and
- f. Any criminal offense in another jurisdiction that, had the predicate act(s) been committed in Iowa, would have constituted any of the foregoing offenses.

119.03 PERMIT REQUIRED. No person, firm, corporation, or other legal entity shall operate a Massage Therapy Business, either exclusively or in connection with another business, without first obtaining a Permit from the City as provided in this Chapter . A separate Permit shall be obtained for each business or place of business. The Permit Holder shall display the Permit in a prominent place in the permitted business at all times. Permits shall identify the applicant and all Massage Therapists employed by the Applicant.

119.04 PERMIT FEE. At the time of submittal of a Massage Therapy Business Permit application, the Applicant shall pay to the City Clerk the applicable Permit Fee.

The initial Permit fees shall be waived for any established Massage Therapy Business in Norwalk at the passing of this ordinance.

The initial Permit fee for a new Massage Therapy Business is \$75.00. This is a one-time charge unless the business owners etc. change as described in section 119.07(4) of this ordinance.

There is an additional fee of \$25.00 for each Massage Therapist, who is not the Applicant, employed at the business. This fee shall be paid prior to the Massage Therapist providing Massage Therapy at the Massage Therapy Business.

Permits, if granted, and not revoked or suspended, shall be valid until the end of the calendar year, so long as the business does not materially change ownership, business name or the service provided.

119.05 PERMIT APPLICATION. Application for a Massage Therapy Business Permit shall be submitted on forms provided by the City Clerk's Office. The application shall include the following information:

1. The address of the Massage Therapy Business location and documentation establishing the Applicant's interest in the premises on which the business will be located, which shall be in the form of a lease, deed, or other document that establishes the applicant's interest in the property.
2. The full legal name, date of birth, and residential address of each Applicant, owner, manager, Employee, agent, contractor, or other person affiliated with or who is or will be present on the premises to perform Massage Therapy, regardless of the legal relationship between the Permit Holder and the persons performing Massage Therapy services.
3. In the event the Applicant is a business entity proof the entity is registered and in good standing with the Iowa Secretary of State's office.
4. Dates and locations of other places the applicant has owned or operated a Massage Therapy Business.
5. Each new applicant, owner, manager, Employee, agent, contractor, or other person who is or will be present on the premises to perform Massage Therapy, who resides in the State of Iowa, shall provide, at the applicant's expense, an officially sealed State of Iowa Division of Criminal Investigation (DCI) personal background check to the City, which is

dated no more than thirty (30) days prior to the application. Those who do not reside in the State of Iowa shall provide, at the applicant's expense, an equivalent personal background check from the applicant's state of residence.

6. Each new applicant, owner, manager, Employee, agent, contractor, or other person who is or will be present on the premises to perform Massage Therapy shall be fingerprinted and photographed by the City's Police Department. The Police Department's fingerprint fee shall be waived for persons associated with a Massage Therapy Business in existence at the adoption of this ordinance. All others shall be fingerprinted at their own expense.
7. A statement as to whether each applicant, owner, manager, Employee, agent, contractor, or other person providing Massage Therapy on behalf of the Massage Therapy Business has ever been convicted of specified criminal activity as defined in this chapter. The statement shall include details regarding the type of each charge and the date and location of the incident(s) in question.
8. A statement as to whether the applicant, owner, manager, Employee, agent, contractor, or other person providing Massage Therapy on behalf of the Massage Therapy Business has had any license to perform Massage Therapy denied, revoked, or suspended in any city, county, state, or any country and the reason for denial, revocation, or suspension.
9. A copy of a state government issued photo identification of each new applicant, owner, manager, Employee, agent, contractor, or other person present on the premises who has or will provide Massage Therapy, or other proof that the person is legally authorized to work in the United States.
10. Provide proof of current State of Iowa Massage Therapy licenses for all persons present on the premises who have or will provide Massage Therapy.
11. All Applicants and Permit Holders shall be required to promptly notify the City during the application review or the term of the Permit if there are any new owners, managers, Employees, agents, contractors, or other persons who are or will be present on the premises to perform Massage Therapy and shall immediately submit updated information to the City pursuant to this chapter, including but not limited to a personal background check, photographing, fingerprinting, and proof of identification, as well as any amendments to the statements provided as required by this chapter.

12. Any application for a Permit shall be accompanied by proof of insurance executed by an insurance company authorized to do business in the state of Iowa, in the amount of two-million dollars per occurrence, six-million dollars per policy year.
13. If the Applicant is a partnership, LLC, corporation or other business entity, all requirements of individual applicants herein shall apply to all officers, members, directors, shareholders or other owners of the entity.

119.06 GRANTING OR DENIAL OF PERMIT. Permit applications shall be reviewed by the City and the City shall either grant or deny the Permit. The City shall inform the applicant regarding the reasons for a Permit denial.

119.07 CONDITIONS GOVERNING ISSUANCE.

1. No Permit shall be issued if the applicant or any of its owners, managers, Employees, contractors, agents, or other persons performing Massage Therapy at the Massage Therapy Business has a criminal conviction for specified criminal activity as defined in this chapter or who is a registered sex offender. No Permit shall be issued if the applicant has been denied a Permit by another community unless the applicant has provided the City with sufficient proof that the basis for the Permit denial has been remedied.
2. Permits shall be issued only if the applicant and all of its owners, managers, Employees, contractors, agents, or other persons performing Massage Therapy at the Massage Therapy Business are free of convictions for Specified Criminal Activity as defined in this chapter or which relate directly to such person's ability or fitness to legally and safely perform the duties and discharge the responsibilities of the Permitted activity.
3. Permits shall only be issued to applicants who have provided all of the information requested in the application, have paid required Permit fees, and have cooperated with the City during its review of the application.
4. A new Massage Therapy Permit application is required at any time when at least 51% of the ownership of a Massage Therapy Business changes. Permits are not transferable between owners of a Massage Therapy Business.

119.08 PERMIT PERIOD. Permits shall be granted by the City on an annual, calendar year basis. Each Permit issued shall terminate on December 31 of that year. Permit Holders shall obtain a renewal Permit from the City prior to expiration of an existing Permit. Permit Holders shall

apply to the City for a renewal Permit by December 1 of that year to allow the City sufficient time to review a Permit renewal application.

119.09 EXEMPTIONS. This chapter shall not apply to the following businesses:

1. Businesses who employ or provide the services of persons who are licensed to practice medicine or surgery, osteopathic medicine or surgery or chiropractic treatment, athletic trainers, nurses, occupational therapists, physical therapists, or physician assistants licensed, certified, or registered in the State of Iowa or acting under the prescription or supervision of a person licensed to practice medicine or surgery or osteopathic medicine or surgery or chiropractic treatment in the State of Iowa.
2. Massage Therapists who are employed by or are contracted to perform Massage Therapy in a business identified in subsection 1 of this section.
3. Businesses who employ or provide the services of persons who are licensed, registered, or certified in another state, territory, the District of Columbia, or a foreign country when incidentally and temporarily present in the State of Iowa to teach a course of instruction related to massage and bodywork therapy.
4. Businesses which offer the services of students enrolled in a program recognized by the State of Iowa Board of Massage Therapy while completing a clinical requirement for graduation performed under the supervision of a licensed person.
5. Persons giving Massage Therapy to members of their immediate family.
6. Businesses who employ or provide the services of persons engaged within the scope of practice of a profession with established standards and ethics utilizing touch, words, and directed movement to deepen awareness of existing patterns of movement in the body as well as to suggest new possibilities of movement, provided that the practices performed or services rendered are not designated or implied to be Massage Therapy. Such practices include, but are not limited to, the Feldenkrais method, the Trager approach, and mind-body centering.
7. Businesses who employ or provide the services of persons engaged within the scope of practice of a profession with established standards and ethics in which touch is limited to that which is essential for palpitation and affectation of the human energy system, provided that the practices performed or services rendered are not designated or implied to be Massage Therapy.

8. Businesses who employ or provide the services of persons incidentally present in the State of Iowa to provide services as part of an emergency response team working in conjunction with disaster relief officials.

119.10 GROUNDS FOR DENIAL, SUSPENSION, OR REVOCATION OF PERMIT. In addition to any other reasons set forth in this chapter, it shall be grounds for denial, suspension, and/or revocation of a Massage Therapy Business Application or Massage Therapy Business Permit if one or more of the following conditions have occurred:

1. If the Applicant or Permit Holder has not complied with or has a history of violations of the laws and ordinances that might adversely impact public health or safety.
2. If the Applicant or Permit Holder solicits or advertises to offer services that are in violation of this chapter.
3. If the Applicant or Permit Holder has been convicted of any violation, reasonably related to the activity to be Permitted or that has been Permitted, or has occurred on the Premises, of any City ordinance, State Statute, or Federal law.
4. If there has been any fraud or deception involved in the Permit application process.
5. If the Permit Holder has been found to be in control or possession of any narcotic drugs or controlled substances on the Premises for the Massage Therapy Business which they are Permitted to operate, possession of which is illegal as defined by City ordinance, State Statute, or Federal law.
6. If the Applicant or Permit Holder has engaged in willful disregard of Health or Safety Codes and regulations.
7. If the Applicant fails to provide all of the information required by this chapter, including any failure to promptly submit updated information.
8. If the Permit Holder allows an unlicensed individual or individuals not identified on the permit issued by the City to conduct Massage Therapy services at the Permit Holders premises or Massage Therapy Business.
9. If the Permit Holder refuses to allow any police officers or government officials to inspect the premises or operations.

10. If the Permit Holder has been found to be in violation of the provisions of this chapter or the Iowa Code.
11. If the business promotes its services through any media, printed, electronic, internet based or otherwise that are known to advertise services that are illegal.

119.11 NOTICE; APPEAL.

1. Notice: The City Clerk shall have the Applicant or Permit Holder served with notice either in person or by regular mail to the Permit Holder's address shown on the Permit application and posting of a notice on the entrance door to the business premises notifying the Permit Holder of the Permit denial, suspension, or revocation and the specific reason(s) for such action. The Applicant or Permit Holder shall be prohibited from any further activities covered by the Permit during the term of any suspension or revocation, including during any appeal periods unless otherwise allowed by court order.
2. Appeal: The Applicant or Permit Holder shall have ten (10) calendar days from the date of notice to appeal the City's denial, suspension, or revocation of a Massage Therapy Business Permit. The appeal must be writing and filed with the City Clerk during normal City Hall business hours. The Chief of Police shall hear the appeal and may reverse, modify, or affirm the decision.
3. Appeal Of Adverse Appeal Decision: The Applicant or Permit Holder or the City may then appeal an adverse decision by the Chief of Police to the Warren County, Iowa, District Court within thirty (30) calendar days from the date of the Hearing Officer's decision.
4. Waiver: Failure to appeal any decision within the provided time frame shall constitute a waiver of any right to contest the decision.

119.12 RESTRICTIONS AND REGULATIONS:

1. Compliance with Law: The Permit Holder and all of its Employees and contractors shall comply with all applicable regulations and laws of the City and State of Iowa.
2. Person In Charge: If the Applicant or Permit Holder is a partnership, corporation, or other legal entity, the Applicant or Permit Holder shall designate a local representative

to serve as agent for service of notices and other process relating to the business and provide the local representative's telephone number, e-mail address, and mailing address. The Applicant or Permit Holder shall promptly notify the City Clerk in writing of any change to the identity or contact information of the local representative.

3. Hours Of Business: The Permitted Premises shall not be open for business nor shall patrons be permitted on the Premises between the hours of ten o'clock (10:00) p.m. and seven o'clock (7:00) a.m. No person shall be or remain inside the Permitted Premises between the hours of eleven o'clock (11:00) p.m. and six o'clock (6:00) a.m., unless Premises is a residence with a valid home occupancy permit.
4. Therapist Required on Premises: Each Permitted Massage Therapy Business shall have at least one licensed Massage Therapist on the Premises at all hours that the business is occupied by Massage Therapy Patrons or is open to the public. If, during an inspection, there is no licensed Massage Therapist on the Premises, the business must cease operations and close until a licensed Massage Therapist is on the premises.

119.13 UNLAWFUL ACTS; PENALTY

1. A person who commits or attempts to commit, conspires to commit, or aids or abets in the commission of an act constituting a violation of this chapter, whether individually or in connection with one or more persons, or as principal, agent, or accessory, has committed an unlawful act for purposes of this chapter. A person who falsely, fraudulently, forcibly, or willfully, induces, causes, coerces, permits, or directs another person to violate a provision of this chapter has also committed an unlawful act for purposes of this chapter.
2. Commission of any act declared unlawful and in violation of the provisions of this chapter shall constitute a simple misdemeanor punishable as provided in this Code. Failure to comply with the provisions of this chapter shall also constitute a Municipal Infraction punishable pursuant to this Code.