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# CITY of NOVI CITY COUNCIL

**Agenda Item D**  
**April 7, 2008**

**SUBJECT** Approval of amendments to Chapter 20, Massage, Ordinance No. 08-120.05, amending Article I, In General, Article II, Business License, and Article III, Massage Therapist Permit. **Second Reading**

**SUBMITTING DEPARTMENT:** City Clerk *mc*

**CITY MANAGER APPROVAL:** *[Signature]*

**BACKGROUND INFORMATION:** City Council referred the Massage Ordinance to the Ordinance Review Committee to reassess the fees associated with massage business licenses as well as massage therapist permits. Ordinance Review Committee met on two occasions to discuss amending the ordinance. Discussion was held regarding the reasons behind inspecting massage businesses including egress, alarm, fire inspection, building inspection and Police maintaining rights to enter for inspections. The fee resolution changing the Massage Business license fee to \$250 and the Massage Therapist Permit fee to \$45 was approved on March 17<sup>th</sup>. Attached is the red-line strikeout version of the amended ordinance as proposed.

**RECOMMENDED ACTION:** Approval of amendments to Chapter 20, Massage, Ordinance No. 08-120.05, amending Article I, In General, Article II, Business License, and Article III, Massage Therapist Permit. **Second Reading**

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Capello				
Council Member Crawford				
Council Member Gatt				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Staudt				

STATE OF MICHIGAN  
COUNTY OF OAKLAND  
CITY OF NOVI

ORDINANCE NO. 08-120.05

AN ORDINANCE TO AMEND THE CITY OF NOVI CODE OF ORDINANCES, CHAPTER 20, "MASSAGE," IN ORDER TO CHANGE THE DEFINITION OF MASSAGE, TO CLARIFY INSPECTION REQUIREMENTS, TO REVISE THE REVOCATION PROCEDURES FOR ESTABLISHMENT LICENSES, TO REVISE THE REQUIREMENTS FOR MASSAGE THERAPIST PERMITS, AND TO MAKE OTHER CHANGES OF A PROCEDURAL OR MINOR SUBSTANTIVE NATURE.

THE CITY OF NOVI ORDAINS:

PART I.

That Chapter 20, "Massage," of the City of Novi Code of Ordinances, is hereby amended to read as follows in its entirety:

ARTICLE I. IN GENERAL

Sec. 20-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Employee* means any person over eighteen (18) years of age, other than a massage therapist, who renders any service in connection with the operation of a massage business and receives compensation from the operator of the business or patrons.

*Health club* means a gymnasium, fitness center or health spa that is used to maintain or enhance the aerobic condition or physical strength of individuals through the use of free weights or weight lifting machinery, aerobic exercises, running and jogging, game courts or swimming facilities.

*Licensee* means the person to whom a license has been issued to own or operate a massage establishment.

*Massage* means ~~any method of pressure on, friction against, stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external parts of the human body with the hands or with the aid of any mechanical electrical apparatus or appliance with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointment or other such similar preparations commonly used in the practices of massage, under such circumstances that it is~~

~~reasonably expected that the person to whom the treatment is provided or some third person on his behalf will pay money or give any other consideration or any gratuity therefor. the application of a system of structured touch, pressure, movement, and holding to the soft tissue of the human body in which the primary intent is to enhance or restore the health and well-being of the client. Practice of massage therapy includes complimentary 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, under such circumstances that it is reasonably expected that the person receiving the massage or some third person on his or her behalf will pay money or give any other consideration or a gratuity therefor. Massage does not include medical diagnosis; high-velocity, low-amplitude thrust to a joint; electrical stimulation; application of ultrasound; or prescription of medicines.~~

*Massage establishment* means any establishment having a source of income or compensation derived from the practice of massage, and which has a fixed place of business where any person engages in or carries on any of the activities defined as massage. This definition does not include a regularly licensed hospital or dispensary, a place where massage of the face is for cosmetic or beautifying purposes, a place providing massage in the course of prescribed medical treatment by a physician or a health club, as defined herein, where massage is offered as an accessory service. Massage shall be considered an accessory service if the revenue received from the massage activities comprise no more than five (5) per centum of the gross receipts of the business location. A health club that offers massage as an accessory service shall be exempt from the permitting requirements, but is still required to annually submit an income statement to the police chief for review by the finance department to verify that the gross receipts for massage do not exceed five (5) per centum.

*Massage therapist* means any person who, for any consideration whatsoever, engages in the practice of massage.

*Outcall massage service* means any business, the function of which is to engage in or carry on massages at a location designated by the customer or client rather than at a massage establishment.

*Patron* means any person over eighteen (18) years of age, or a person under eighteen (18) years of age who is accompanied by a parent or guardian or who has written authorization from a parent or guardian confirmed by a massage therapist, who receives a massage under such circumstances that it is reasonably expected that he will pay money or give any other consideration therefor.

*Permittee* means the person to whom a permit has been issued to act in the capacity of a massage therapist.

*Recognized school* means any school or educational institution in the state in which it is located or any school recognized by or approved by or affiliated with the American Massage ~~and~~ Therapy Association, Inc., (AMTA), the International Myomassethics Federation (IMF), or the Associated Bodywork and Massage Professionals (ABMP) and which has for its purpose the teaching of the theory, method, profession or work of massage, which school requires a resident course of study not less than seventy-five hundred (70500) hours 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.

*Sexual or genital area* means genitals, pubic area, ~~buttocks~~, anus, or perineum of any person and the vulva or breasts of a female.

### **Sec. 20-2. Exemptions.**

This chapter shall not apply to the following individuals while engaged in the personal performance of the duties of their respective professions:

- (1) Physicians, surgeons, chiropractors, osteopaths, podiatrists and physical therapists who are duly licensed to practice their respective professions in the state;
- (2) Nurses who are registered under the laws of this state;
- (3) Barbers, cosmetologists and manicurists who are duly licensed by the State of Michigan, but only to the extent they are performing functions permitted pursuant to their licensing by the State of Michigan;
- (4) Trainers for any amateur or professional athlete or athletic team or school athletic program.

### **Sec. 20-3. Register of employees.**

The licensee or person designated by the licensee of a massage establishment shall maintain a register of all persons employed at any time as massage therapist and their permit numbers. Such register shall be available at the massage establishment to representatives of the city during regular business hours.

### **Sec. 20-4. Operating requirements generally.**

- (a) Every portion of the massage establishment, including appliances and apparatus, shall be kept clean and operated in a sanitary condition.
- (b) Price rates for all services shall be prominently posted in the reception area in a location available to all prospective customers.
- (c) All employees, including massage therapists, shall be clean and wear clean, nontransparent outer garments, covering the sexual and genital areas, whose use is restricted to the massage establishment. If employees are permitted to change clothing at the premises, a separate dressing room for each sex must be available on the premises with individual lockers for each employee. Doors to such dressing rooms shall open inward and shall be self-closing. Employee dressing rooms shall be separate from facilities utilized by customers.
- (d) All massage establishments shall be provided with clean, laundered sheets and towels in sufficient quantity and shall be laundered after each use thereof and stored in a sanitary manner.
- (e) No massage establishment granted a license under the provisions of this chapter shall place, publish or distribute or cause to be placed, published or distributed any advertisement picture or statement which is known or through the exercise of reasonable care should be known to be false, deceptive or misleading in order to induce any person to purchase or utilize any professional massage services.

### **Sec. 20-5. Minors.**

No person shall permit any person under the age of eighteen (18) years to come or remain on the premises of any massage business establishment as massage therapist, employee, or patron, unless such person is accompanied by a parent or guardian or has written authorization from a parent or guardian confirmed by a massage therapist, or on the premises on lawful business unrelated to receiving or giving a massage.

#### **Sec. 20-6. Alcoholic liquor.**

No person shall sell, give, dispense, provide, keep, or cause to be sold, given, dispensed, provided or kept any alcoholic liquor on the premises of any massage business.

#### **Sec. 20-7. Hours.**

No massage business shall be kept open for any purpose between the hours of 9:00 p.m. and 8:00 a.m.

#### **Sec. 20-8. Massage therapist required to have permit.**

No person shall employ as a massage therapist any person unless the employee has obtained and has in effect a permit to practice massage or massage therapy issued pursuant to this chapter or pursuant to the laws of the State of Michigan, including the Public Health Code, 1978 PA 368, as amended.

#### **Sec. 20-9. Inspections.**

The police chief or his designee shall be authorized to make inspections of each massage business establishment for the purposes of determining that the provisions of this chapter are fully complied with. If in the opinion of the police chief (or designee) there is probable cause to enter a massage establishment for the purpose of making inspections and examinations pursuant to this section, he shall request the owner or occupant thereof, or the licensee, to grant permission for such entry, and if refused, ~~he shall inform~~ the police chief or his designee, and ~~he~~ shall make application ~~to a judge of the district court~~ for a search warrant showing ~~the judge~~ why the search warrant should be issued for the purposes set forth in this chapter. The building official or fire chief, or their designees, shall similarly have the authority to inspect the premises of a massage establishment in order to determine compliance with the provisions of this chapter, upon request to the owner or occupant thereof, or the licensee. If entry is denied, the building official or fire chief shall report the denial to the police chief or his designee for appropriate action consistent with this section.

#### **Sec. 20-10. Unlawful acts.**

(a) It shall be unlawful for any person in a massage establishment to place his hands upon, to touch with any part of his body, to fondle in any manner, and to massage the sexual or genital area of any other person.

(b) It shall be unlawful for any person in a massage establishment to expose his sexual or genital area or any portion thereof to any other person. It shall also be unlawful for any person in a massage establishment to expose the sexual or genital area or any portions thereof of any other person.

(c) It shall be unlawful for any person while in the presence of any other person in a massage establishment to fail to conceal with a fully opaque covering the sexual or genital area of his body.

(d) It shall be unlawful for any person owning, operating or managing a massage establishment, knowingly to cause, allow or permit in or about such massage establishment any agent, employee, or any other person under his control or supervision to perform such acts prohibited in subsections (a), (b) or (c) of this section.

(e) It shall be further unlawful for any permittee under this chapter to administer massage on an outcall basis. Such person shall administer massage solely within an establishment licensed to carry on such business under this chapter. Any violation of these provisions shall be deemed grounds for revocation of the permit granted pursuant to this chapter. The restriction on outcall massage shall not apply to a permittee who performs outcall massage: (1) at a hospital, a health care facility, rehabilitation facility or a facility the primary purpose of which is to provide services to or activities for persons who are disabled or ~~f~~ fifty-five (55) years or older; ~~or~~ (2) upon a customer or client who, because of reasons of physical defects or incapacities or due to illness is physically unable to travel to the massage establishment; or (3) as a service for a business or other entity who seeks to provide massages to employees as part of a "wellness" or health awareness program or event on a limited or infrequent basis with seven (7) days notice to the city through the city clerk's office, provided that such massages are administered only in areas of a building or premises fully open to view and the individual receiving the massage is fully clothed. Unless otherwise prohibited by state or federal laws regarding privacy. If any outcall massage is performed under subpart (2) or (3), a record of the date and hour of each treatment, and the name and address of the customer or client, and the name of the employee administering such treatment and the type of treatment administered, as well as the nature of the physical defect, incapacity or illness of the client or customer shall be kept by the licensee or person or employee designated by the licensee. Such records shall be open to inspection by officials charged with the enforcement of public health laws. The information furnished or secured as a result of any such inspection shall be confidential. Any unauthorized disclosure or use of such information by an employee of the city shall be unlawful.

(f) It shall be unlawful for any massage service to be carried on within any cubicle, room, booth, or any area within a massage establishment which is fitted with a door capable of being locked. Doors shall be provided with a sign, light or other signaling device to indicate when the cubicle, room, booth or area is occupied and a massage is being provided.

#### **Sec. 20-11. Penalty for violations.**

Every person, except those persons who are specifically exempted by this chapter, whether acting as an individual owner, employee of the owner, operator or employee of the operator, or whether acting as a mere agent or independent contractor for the owner, employee or operator, or acting as a participant or worker in any way directly or indirectly who gives massages or operates a massage establishment or any of the services defined in this chapter without first obtaining a license or permit to do so from the city and paying a fee or who shall violate any provisions of this chapter shall be guilty of a misdemeanor and upon conviction such person shall be punished as provided in section 1-11. Any violation of this chapter is hereby declared to be a public nuisance per se, and may be abated by order of any court of competent jurisdiction.

## **ARTICLE II. BUSINESS LICENSE\***

#### **Sec. 20-26. Required.**

No person shall engage in or carry out the business of massage unless he has or is engaged in activity as permitted under, a valid massage business license issued by the city pursuant to the

provisions of this chapter for each and every separate office or place of business conducted by such person.

### **Sec. 20-27. Application.**

(a) *Filing, fee.* Every applicant for a license to maintain, operate, or conduct a massage establishment shall annually file an application under oath with the city upon a form provided by the city clerk and pay a nonrefundable annual license fee as set from time to time by resolution of the council, which such fee shall also include a charge based on the number of individual massage therapists to be employed at the establishment, and as to each such massage therapist a permit under Article III below shall also be applied for at the same time as the establishment license.

(b) *Inspections of premises.* Copies of the application shall within five (5) days also be referred to the department of building and safety and the fire department. The departments shall within thirty (30) days inspect the premises proposed to be operated as a massage establishment and shall make written verification to the city clerk by the building official and fire chief or code official concerning compliance with the codes of the city that they administer. The inspections shall be conducted by personnel as determined to be appropriate by each department, and may include additional inspections or re-inspections by additional personnel to determine compliance.

(c) *Investigation of applicants.* The application shall further be referred to the police department for investigation of the applicant's character and qualifications.

(d) *Contents.* Each application shall contain the following information:

(1) A definition of service to be provided;

(2) The location, mailing address and all telephone numbers where the business is to be conducted;

(3) The name and residence address of the applicant:

a. If the applicant is a corporation, the names and residence addresses of each of the officers and directors of the corporation and of each stockholder owning more than ten (10) percent of the stock of the corporation, each of which shall be considered to be an applicant under this chapter, and the address of the corporation itself, if different from the address of the massage establishment;

b. If the applicant is a partnership, the names and residence addresses of each of the partners including limited partners, each of which shall be considered to be an applicant under this chapter, and the address of the partnership itself, if different from the address of the massage establishment;

c. If the applicant is a limited liability company, the names and addresses of each member, manager and assignee of membership interest, each of which shall be considered to be an applicant under this chapter, and the address of the limited liability company, if different from the address of the massage establishment.

(4) The prior addresses of the applicant for preceding ten (10) years;

(5) Proof that the applicant is at least eighteen (18) years of age;

(6) Applicant's height, weight, color of eyes and hair, and sex;

(7) Copy of identification such as driver's license and social security card, if any;

(8) One (1) portrait photograph of the applicant at least two (2) inches by two (2) inches and a complete set of applicant's fingerprints which shall be taken by the police chief. If the applicant is a corporation, one (1) portrait photograph at least two (2) inches by two (2) inches of all officers and managing agents of the corporation and a complete set of the same officers' and agents' fingerprints which shall be taken by the police chief. If the applicant is a partnership, one (1) front-face portrait photograph at least two (2) inches by two (2) inches in size of each partner, including a limited partner in the partnership, and a complete set of each partner or limited partner's fingerprints which

shall be taken by the police chief. The City of Novi Police Department shall collect from the applicant at the time said fingerprints are taken such applicable fingerprinting processing fees, as dictated by the Michigan State Police Department. The City of Novi Police Department shall thereafter forward said fingerprints and the applicable fingerprinting processing fee to the Michigan State Police Department. If the applicant is a limited liability company, one (1) front-face portrait photograph at least two (2) inches by two (2) inches in size of each member, manager and assignee of membership interest, and a complete set of each member's, manager's and assignee's of membership interest fingerprints which shall be taken by the police chief. If any of the applicants listed above are unable to make themselves available for fingerprinting by the police chief, then they may have their fingerprints taken by an outside law enforcement agency in another jurisdiction in the United States and submitted to the police chief;

(9) Business, occupation, or employment of the applicant for three (3) years immediately preceding the date of application, identifying the time period, address and telephone number for each business, occupation or employment;

(10) The massage or similar business license history of the applicant; including whether such person, in previously operating in this or another city or state has had a business license revoked or suspended, the reason therefor, and the business activity or occupation subsequent to such action of suspension or revocation;

(11) All criminal convictions other than misdemeanor traffic violations, including the dates of convictions, nature of the crimes and place convicted;

(12) A written statement and information as to the applicant's character, experience and financial ability to meet the obligations and business undertakings for which the license is to be issued. In those cases where the applicant is borrowing funds for such purpose, the identification of the person or entity providing the funds, and information as to the financial ability of such other entity or person to meet such obligations and undertakings;

(13) The names, current addresses and written statements of at least three (3) bona fide permanent residents of the United States that the applicant is of good moral character. If the applicant is able, the statement must first be furnished from residents of the city, then the county, then the state and lastly from the rest of the United States. These references must be persons other than relatives and business associates;

(14) The name and address of each massage therapist who is or will be employed in the establishment;

(15) A diploma or certificate of graduation from a recognized school or other institution of learning wherein the method, profession and work of massage is taught, provided, however, that if the applicant will not himself engage in the practice of massage, he need not possess such diploma or certificate of graduation from a recognized school or other institution of learning wherein the method, profession and work of massage is taught;

(16) The name and address of any massage business or other establishment owned or operated by any person whose name is required to be given in subsection (3) of this section wherein the business or profession of massage is carried on;

(17) A description of any other business to be operated on the same premises or on adjoining premises owned or controlled by the applicant;

(18) If the facility is to be located in a proposed building for which site plan approval has not yet been obtained, or in an existing building that is to be remodeled, construction plans for the proposed building or remodeling, together with a conceptual plan showing the relationship of the building to the surrounding property and uses, and proposed building elevations;



(19) Authorization ~~from~~ 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 the qualifications of the applicant for the license;

(20) Any other information pertinent to the application and operation of the proposed facility as may be required by this chapter;

(21) Such other identification and information necessary to discover the truth of the matters specified in this section as required to be set forth in the application.

Upon completion of the above provided form and the furnishing of all information required by this section the city clerk shall accept the application for the necessary investigations. The holder of a massage establishment license shall notify the city clerk of each change in any of the data required by this section to be furnished within ten (10) days after such change occurs.

### **Sec. 20-28. Facilities required.**

No license to conduct a massage establishment shall be issued unless an inspection by the city reveals that the establishment complies with each of the following minimum requirements:

(1) Construction of rooms used for toilets, tubs, steam baths and showers shall be made waterproof with approved waterproofed materials and shall be installed in accordance with the state construction code. Plumbing fixtures shall be installed in accordance with the state construction code:

a. Steam rooms and shower compartments shall have waterproof floors, walls and ceilings approved by the department of building and safety.

b. Floors of wet and dry heat rooms shall be adequately pitched to one (1) or more floor drains properly connected to the sewer. Exception: Dry heat rooms with wooden floors need not be provided with pitched floors and floor drains.

c. A source of hot water must be available within the immediate vicinity of dry and wet heat rooms to facilitate cleaning.

(2) The premises shall have adequate equipment for disinfecting and sterilizing nondisposable instruments and materials used in administering massages. Such nondisposable instruments and materials shall be disinfected after use on each patron.

(3) Closed cabinets shall be provided and used for the storage of clean linens, towels and other materials used in connection with administering massages. All soiled linens, towels and other materials shall be kept in properly covered containers or cabinets, which containers or cabinets shall be kept separate from the clean storage areas.

(4) Toilet facilities shall be provided in convenient locations. When employees and patrons of different sexes are on the premises at the same time separate toilet facilities shall be provided for each sex. A single water closet per sex shall be provided for each twenty (20) or more employees or patrons of that sex on the premises at any one time. Urinals may be substituted for water closets after one (1) water closet has been provided. Toilets shall be designated as to the sex accommodated therein.

(5) 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 and a dispenser and with sanitary towels.

(6) All electrical equipment shall be installed in accordance with the requirements of the state construction code.

(7) 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, whenever such inspection is deemed necessary by the police or health departments.

### **Sec. 20-29. Grounds for grant or denial.**

In determining whether to grant or deny a license for a massage establishment, the city clerk shall consider:

- (1) Whether the correct license 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 applicant's experience in managing a massage establishment or in managing similar establishments;
- (3) The applicant's general business management experience;
- (4) The applicant's general business reputation;
- (5) The applicant's moral character;
- (6) Whether the applicant if an individual, any of the stockholders holding more than ten (10) percent of the stock of the corporation or any of the officers and directors if the applicant is a corporation, any of the partners including limited partners if the applicant is a partnership, any of the members, managers or assignees of membership interest if the applicant is a limited liability company, or the holder of any lien of any nature upon the business and/or the equipment used therein, and the manager or other person principally in charge of the operation of the business, have been convicted of any of the following offenses or convicted of an offense outside the state that would have constituted any of the following offenses if committed within the state;
  - a. An offense involving the use of force and violence upon the person of another that amounts to a felony;
  - b. An offense involving sexual misconduct;
  - c. An offense involving narcotics, dangerous drugs or dangerous weapons that amounts to a felony.
- (7) The applicant's financial status and ability to build and operate the proposed facility.
- (8) The effects that the proposed facility would have upon the surrounding neighborhood and business establishments, including impacts upon residential areas, church and school districts;
- (9) Whether the operation, as proposed by the applicant, if licensed would comply with all applicable laws, including but not limited to the city's building, zoning and health regulations. If the facility is to be located in a proposed building for which site plan approval has not been obtained, or in an existing building that is to be remodeled, the city clerk may give conditional approval of a license, contingent upon the granting of a final certificate of occupancy for the facility;
- (10) Whether the applicant has knowingly made any false, misleading, or fraudulent statement of fact in the license application or in any document required by the city in conjunction therewith;
- (11) Whether the applicant has had a massage business, massage therapist, or other similar permit or license denied, revoked, or suspended by the city or any other state or local agency within five (5) years prior to the date of the application;
- (12) Whether the applicant if an individual, any of the officers or directors if the applicant is a corporation, any of the partners including limited partners if the applicant is a partnership, any of the members, managers or assignees of membership interest if the applicant is a limited liability company, and the manager or other person principally in charge of the operation of the business, is not over the age of eighteen (18) years.

(13) Such other considerations as the city clerk may deem proper, provided such considerations are reasonable under the circumstances.

**Sec. 20-30. Approval or denial of application.**

The city shall act to approve or deny an application for a license under this article within a reasonable period of time and in no event shall the city act to approve or deny the license later than ninety (90) days from the date that the application was accepted by the city clerk.

**Sec. 20-31. Display.**

Every person, corporation, partnership, or association licensed pursuant to this article shall display such license in a prominent place.

**Sec. 20-32. Multiple locations of business.**

Should any massage business have more than one (1) location where the business of massage is pursued, then a license stating both the address of the principal place of business and of the other locations shall be issued by the city clerk upon the tender of a license fee as set by resolution of the council. Licenses issued for other locations shall terminate on the same date as that of the principal place of business, regardless of the date of issuance.

**Sec. 20-33. Sale, transfer, change of location of establishment.**

Upon sale, transfer or relocation of a massage establishment, the license therefor shall be null and void unless approved as provided in section 20-27 provided, however, that upon the death or incapacity of the licensee or any colicensee of the massage establishment, any heir or devisee of a deceased licensee or any guardian of an heir or devisee of a deceased licensee may continue the business of the massage establishment for a reasonable period of time not to exceed sixty (60) days to allow for an orderly transfer of the license.

**Sec. 20-34. Transferability.**

No license shall be transferable except with the consent of the city by approval of the city clerk. An application for such transfer shall be in writing and shall be accompanied by the fee required in section 20-27. The written application for such transfer shall contain the same information as requested in this article for initial application for the license.

**Sec. 20-35. Operation under name or at place not specified.**

No person granted a license pursuant to this article shall operate the massage establishment under a name not specified in his license nor shall he conduct business under any designation or location not specified in his license.

**Sec. 20-36. Expiration.**

Every license issued pursuant to this article will terminate December 31 of each year unless sooner suspended or revoked.

**Sec. 20-37. Revocation, suspension.**

Any license issued for a massage establishment may be revoked or suspended ~~by the council~~ after notice and a hearing for good cause or in any case where any of the provisions of this chapter are violated or where any employee of the licensee, including a massage therapist, is engaged in any conduct which violates any of the state or local laws or ordinances at the licensee's place of business and the licensee has actual or constructive knowledge by due diligence. Such license may also be revoked or suspended ~~by the council~~ after notice and hearing, upon the recommendations of the county health department that such business is being managed, conducted or maintained without regard to proper sanitation and hygiene. ~~Revocation proceedings by the council shall be conducted within a reasonable time after notice of time and place of hearing and notice of cause for revocation.~~ shall be conducted by an administrative hearing officer appointed by the council by resolution. Upon appointment, such individual shall serve as requested. The qualifications of the hearing officer shall include familiarity with building and health codes or other state or local laws or ordinances. The hearing officer shall provide notice of the hearing to the applicant, who shall be given opportunity to be heard and to present evidence on his behalf directly or by authorized representative(s). The notice and hearing shall occur within a reasonable time. Consistent with the provisions of Chapter 1 of this code, Sec. 1-12, the decision of the hearing officer may be appealed to the city council.

**ARTICLE III. MASSAGE THERAPIST PERMIT**

**Sec. 20-51. Required.**

No person shall practice massage as a massage therapist, employee or otherwise, unless he has secured a valid and subsisting massage therapist's permit issued to him by the city pursuant to the provisions of this article.

**Sec. 20-52. Application.**

Application for a massage therapist's business permit shall be made to the city clerk by the holder of the establishment license as set forth in Article II and shall be made at the same time and in the same manner as provided above for massage establishment licenses therein, except where the massage therapist is not employed by the establishment at the time of its annual application, in which case the application shall be made and a massage therapist's license secured before the massage therapist may engage in any activity regulated under this ordinance, and shall be accompanied by the annual nonrefundable massage therapist's permit fee as set from time to time by resolution of the council. The application shall contain but not be limited to the following:

- (1) The business address and all telephone numbers where the massage is to be practiced;
- (2) Name and residence address, and all names, nicknames and aliases by which the applicant has been known, including the two (2) previous addresses immediately prior to the present address of the applicant;

- (3) Social security number, driver's license number, if any, and date of birth;
- (4) Applicant's weight, height, color of hair and eyes, and sex;
- (5) Written evidence that the applicant is at least eighteen (18) years of age;
- (6) A complete statement of all convictions of the applicant for any felony or misdemeanor or violation of a local ordinance, except misdemeanor traffic violations;
- (7) A complete set of the applicant's fingerprints which shall be taken by the City of Novi Police Department. The City of Novi Police Department shall collect from the applicant at the time said fingerprints are taken such applicable fingerprinting processing fees, as dictated by the Michigan State Police Department. The City of Novi Police Department shall thereafter forward said fingerprints and the applicable fingerprinting processing fee to the Michigan State Police Department;
- (8) Two (2) front-face portrait photographs taken within thirty (30) days of the date of application and at least two (2) inches by two (2) inches in size;
- (9) The name and address of the recognized school attended, the dates attended and a copy of the diploma or certificate of graduation awarded the applicant showing the applicant has completed not less than ~~seventy-five hundred~~ (70500) hours of instruction;
- (10) Proof of current basic certification by International Myomassethics Federation (IMF), the American Massage Therapy Association (AMTA), the Associated Bodywork and Massage Professionals (ABMP), or other national massage therapy organization with comparable certification requirements;
- (11) The massage or similar business history and experience ten (10) years prior to the date of application, including but not limited to whether or not such person in previously operating in this or another city or state under license or permit has had such license or permit denied, revoked, or suspended and the reasons therefor, and the business activities or occupations subsequent to such action of denial, suspension or revocation;
- (12) The names, current addresses and written statements of at least five (5) bona fide permanent residents other than relatives, of the United States that the applicant is of good moral character. If the applicant is able, the statement must first be furnished from residents of the city, then the county, then the state and lastly from the rest of the United States;
- (13) A medical certificate signed by a physician licensed to practice in the state within seven (7) days of the date of the application stating that the applicant was examined by the certifying physician and that the applicant is free of communicable disease. The additional information required by this subsection shall be provided at the applicant's expense;
- (14) Such other information, identification and physical examination of the person deemed necessary by the police chief in order to discover the truth of the matters required by this section to be set forth in the application;
- (15) 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 the qualifications of the applicant for the permit;
- (16) Written declaration by the applicant, under penalty or perjury that the foregoing information contained in the application is true and correct, such declaration being duly dated and signed in the city.

**Sec. 20-53. Waiver of educational requirement.**

The city shall waive the requirements of subsection 20-52(9) if the applicant furnishes satisfactory evidence that he attended not less than ~~seventy-five hundred~~ (70500) hours of instruction in a school within or without this state or in any foreign country that provides education substantially equal to or in excess of the educational requirements of this article.

**Sec. 20-54. Grounds for denial.**

The city shall issue a permit for a massage therapist, after determination by the city clerk that requirements for a massage therapist permit described by this article are met unless it finds:

- (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 applicant has been convicted of any of the following offenses or convicted of an offense outside the state that would have constituted any of the following offenses if committed within the state:
  - a. An offense involving the use of force and violence upon the person of another that amounts to a felony;
  - b. An offense involving sexual misconduct;
  - c. An offense involving narcotics, dangerous drugs or dangerous weapons that amounts to a felony.The city may issue a permit to any person convicted of any of the crimes described in subsection (2) of this section if it finds that such conviction occurred at least five (5) years prior to the date of the application and the applicant has had no subsequent felony convictions of any nature and no subsequent misdemeanor convictions for crime mentioned in this section;
- (3) 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;
- (4) The applicant has had a massage business, massage therapist, or other similar permit or license denied, revoked, or suspended by the city or any other state or local agency within five (5) years prior to the date of the application;
- (5) The applicant is not over the age of eighteen (18) years.

**Sec. 20-55. Approval or denial of application.**

The city shall act to approve or deny an application for a permit under this article within a reasonable period of time and in no event shall the city act to approve or deny the permit later than ninety (90) days from the date that the application was accepted by the city clerk.

**Sec. 20-56. Posting.**

Every massage therapist shall post the permit required by this article in his work area.

**Sec. 20-57. Transferability.**

No permit shall be transferable except with the consent of the city and ratified by approval of the city clerk. An application for such transfer shall be in writing and shall be accompanied by the fee required in section 20-52. The written application for such transfer shall contain the same information as requested in this article for initial application for the permit.

**Sec. 20-58. Expiration.**

Every permit issued pursuant to this article will terminate December 31 of each year unless sooner suspended or revoked.

**Sec. 20-59. Revocation.**

A massage therapist permit issued by the city clerk shall be revoked or suspended where it appears that the massage therapist has been convicted of any offense which would be cause for denial of a permit upon an original application, has made a false statement on an application for a permit, or has committed an act in violation of this chapter. Such revocation proceedings shall be held by the city manager within a reasonable time after notice of time and place of hearing and notice of cause for revocation.

**Sec. 20-60. Preemption: exemption.**

The requirements of this Article II relating to the issuance of a permit for a massage therapist shall not apply to an individual licensed as a massage therapist, as defined herein, under the laws of the State of Michigan, including the Public Health Code, 1978 PA 368, as amended, to the extent such law expressly preempts this Article. However, for each such individual employed by a licensee hereunder in a massage establishment as defined herein, the licensee shall provide to the city clerk:

- a. The name and address of each massage therapist who is or will be employed in the establishment;
- b. A copy of the license issued to each such massage therapist; and
- c. A copy of the driver's license or other proof of identification for the massage therapist.

**PART II.**

**Savings Clause.** The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

**PART III.**

**Severability.** Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

**PART IV.**

**Effective Date: Publication.** The provisions of this Ordinance shall become effective fifteen (15) days after its adoption and shall be published within 15 days of its adoption by publication of a brief

notice in a newspaper circulated in the City, stating the date of enactment and the effective date of the ordinance, a brief statement as to the subject matter of this Ordinance and such other facts as the Clerk shall deem pertinent, and that a copy of the Ordinance is available for public use and inspection at the office of the City Clerk.

MADE, PASSED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF NOVI, OAKLAND COUNTY, MICHIGAN, ON THE \_\_\_ DAY OF \_\_\_\_\_, 2008.

\_\_\_\_\_  
DAVID B. LANDRY – MAYOR

\_\_\_\_\_  
MARYANNE CORNELIUS – CITY CLERK

Ayes:  
Nays:  
Abstentions:  
Absent:

**CERTIFICATION OF ADOPTION**

I hereby certify that the foregoing is a true and complete copy of an Ordinance passed at a \_\_\_\_\_ meeting of the Novi City Council, held on the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
MARYANNE CORNELIUS – CITY CLERK

Adopted:  
Published:  
Effective:

1044731



STATE OF MICHIGAN  
COUNTY OF OAKLAND  
CITY OF NOVI  
ORDINANCE NO. 08-120.05

AN ORDINANCE TO AMEND THE CITY OF NOVI CODE OF ORDINANCES, CHAPTER 20, "MASSAGE," IN ORDER TO CHANGE THE DEFINITION OF MASSAGE, TO CLARIFY INSPECTION REQUIREMENTS, TO REVISE THE REVOCATION PROCEDURES FOR ESTABLISHMENT LICENSES, TO REVISE THE REQUIREMENTS FOR MASSAGE THERAPIST PERMITS, AND TO MAKE OTHER CHANGES OF A PROCEDURAL OR MINOR SUBSTANTIVE NATURE.

THE CITY OF NOVI ORDAINS:

**PART I.**

That Chapter 20, "Massage," of the City of Novi Code of Ordinances, is hereby amended to read as follows in its entirety:

**ARTICLE I. IN GENERAL**

**Sec. 20-1. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Employee* means any person over eighteen (18) years of age, other than a massage therapist, who renders any service in connection with the operation of a massage business and receives compensation from the operator of the business or patrons.

*Health club* means a gymnasium, fitness center or health spa that is used to maintain or enhance the aerobic condition or physical strength of individuals through the use of free weights or weight lifting machinery, aerobic exercises, running and jogging, game courts or swimming facilities.

*Licensee* means the person to whom a license has been issued to own or operate a massage establishment.

*Massage* means the application of a system of structured touch, pressure, movement, and holding to the soft tissue of the human body in which the primary intent is to enhance or restore the health and well-being of the client. Practice of massage therapy includes complimentary 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,

under such circumstances that it is reasonably expected that the person receiving the massage or some third person on his or her behalf will pay money or give any other consideration or a gratuity therefor. Massage does not include medical diagnosis; high-velocity, low-amplitude thrust to a joint; electrical stimulation; application of ultrasound; or prescription of medicines.

*Massage establishment* means any establishment having a source of income or compensation derived from the practice of massage, and which has a fixed place of business where any person engages in or carries on any of the activities defined as massage. This definition does not include a regularly licensed hospital or dispensary, a place where massage of the face is for cosmetic or beautifying purposes, a place providing massage in the course of prescribed medical treatment by a physician or a health club, as defined herein, where massage is offered as an accessory service. Massage shall be considered an accessory service if the revenue received from the massage activities comprise no more than five (5) per centum of the gross receipts of the business location. A health club that offers massage as an accessory service shall be exempt from the permitting requirements, but is still required to annually submit an income statement to the police chief for review by the finance department to verify that the gross receipts for massage do not exceed five (5) per centum.

*Massage therapist* means any person who, for any consideration whatsoever, engages in the practice of massage.

*Outcall massage service* means any business, the function of which is to engage in or carry on massages at a location designated by the customer or client rather than at a massage establishment.

*Patron* means any person over eighteen (18) years of age, or a person under eighteen (18) years of age who is accompanied by a parent or guardian or who has written authorization from a parent or guardian confirmed by a massage therapist, who receives a massage under such circumstances that it is reasonably expected that he will pay money or give any other consideration therefor.

*Permittee* means the person to whom a permit has been issued to act in the capacity of a massage therapist.

*Recognized school* means any school or educational institution in the state in which it is located or any school recognized by or approved by or affiliated with the American Massage Therapy Association, Inc., (AMTA), the International Myomassethics Federation (IMF), or the Associated Bodywork and Massage Professionals (ABMP) and which has for its purpose the teaching of the theory, method, profession or work of massage, which school requires a resident course of study not less than five hundred (500) hours 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.

*Sexual or genital area* means genitals, pubic area, anus, or perineum of any person and the vulva or breasts of a female.

## **Sec. 20-2. Exemptions.**

This chapter shall not apply to the following individuals while engaged in the personal performance of the duties of their respective professions:

- (1) Physicians, surgeons, chiropractors, osteopaths, podiatrists and physical therapists who are duly licensed to practice their respective professions in the state;
- (2) Nurses who are registered under the laws of this state;

- (3) Barbers, cosmetologists and manicurists who are duly licensed by the State of Michigan, but only to the extent they are performing functions permitted pursuant to their licensing by the State of Michigan;
- (4) Trainers for any amateur or professional athlete or athletic team or school athletic program.

**Sec. 20-3. Register of employees.**

The licensee or person designated by the licensee of a massage establishment shall maintain a register of all persons employed at any time as massage therapist and their permit numbers. Such register shall be available at the massage establishment to representatives of the city during regular business hours.

**Sec. 20-4. Operating requirements generally.**

- (a) Every portion of the massage establishment, including appliances and apparatus, shall be kept clean and operated in a sanitary condition.
- (b) Price rates for all services shall be prominently posted in the reception area in a location available to all prospective customers.
- (c) All employees, including massage therapists, shall be clean and wear clean, nontransparent outer garments, covering the sexual and genital areas, whose use is restricted to the massage establishment. If employees are permitted to change clothing at the premises, a separate dressing room for each sex must be available on the premises with individual lockers for each employee. Doors to such dressing rooms shall open inward and shall be self-closing. Employee dressing rooms shall be separate from facilities utilized by customers.
- (d) All massage establishments shall be provided with clean, laundered sheets and towels in sufficient quantity and shall be laundered after each use thereof and stored in a sanitary manner.
- (e) No massage establishment granted a license under the provisions of this chapter shall place, publish or distribute or cause to be placed, published or distributed any advertisement picture or statement which is known or through the exercise of reasonable care should be known to be false, deceptive or misleading in order to induce any person to purchase or utilize any professional massage services.

**Sec. 20-5. Minors.**

No person shall permit any person under the age of eighteen (18) years to come or remain on the premises of any massage business establishment as massage therapist, employee, or patron, unless such person is accompanied by a parent or guardian or has written authorization from a parent or guardian confirmed by a massage therapist, or on the premises on lawful business unrelated to receiving or giving a massage.

**Sec. 20-6. Alcoholic liquor.**

No person shall sell, give, dispense, provide, keep, or cause to be sold, given, dispensed, provided or kept any alcoholic liquor on the premises of any massage business.

**Sec. 20-7. Hours.**

No massage business shall be kept open for any purpose between the hours of 9:00 p.m. and 8:00 a.m.

**Sec. 20-8. Massage therapist required to have permit.**

No person shall employ as a massage therapist any person unless the employee has obtained and has in effect a permit to practice massage or massage therapy issued pursuant to this chapter or pursuant to the laws of the State of Michigan, including the Public Health Code, 1978 PA 368, as amended.

**Sec. 20-9. Inspections.**

The police chief or his designee shall be authorized to make inspections of each massage business establishment for the purposes of determining that the provisions of this chapter are fully complied with. If in the opinion of the police chief (or designee) there is probable cause to enter a massage establishment for the purpose of making inspections and examinations pursuant to this section, he shall request the owner or occupant thereof, or the licensee, to grant permission for such entry, and if refused, the police chief or his designee, shall make application for a search warrant showing why the search warrant should be issued for the purposes set forth in this chapter. The building official or fire chief, or their designees, shall similarly have the authority to inspect the premises of a massage establishment in order to determine compliance with the provisions of this chapter, upon request to the owner or occupant thereof, or the licensee. If entry is denied, the building official or fire chief shall report the denial to the police chief or his designee for appropriate action consistent with this section.

**Sec. 20-10. Unlawful acts.**

- (a) It shall be unlawful for any person in a massage establishment to place his hands upon, to touch with any part of his body, to fondle in any manner, and to massage the sexual or genital area of any other person.
- (b) It shall be unlawful for any person in a massage establishment to expose his sexual or genital area or any portion thereof to any other person. It shall also be unlawful for any person in a massage establishment to expose the sexual or genital area or any portions thereof of any other person.
- (c) It shall be unlawful for any person while in the presence of any other person in a massage establishment to fail to conceal with a fully opaque covering the sexual or genital area of his body.
- (d) It shall be unlawful for any person owning, operating or managing a massage establishment, knowingly to cause, allow or permit in or about such massage establishment any agent, employee, or any other person under his control or supervision to perform such acts prohibited in subsections (a), (b) or (c) of this section.
- (e) It shall be further unlawful for any permittee under this chapter to administer massage on an outcall basis. Such person shall administer massage solely within an establishment licensed to carry on such business under this chapter. Any violation of these provisions shall be deemed grounds for revocation of the permit granted pursuant to this chapter. The restriction on outcall massage shall not apply to a permittee who performs outcall massage: (1) at a hospital, a health care facility, rehabilitation facility or a facility the primary purpose of which is to provide services to or activities for persons who are disabled or fifty-five (55) years or older; (2) upon a customer or client who, because of reasons of physical defects or incapacities or due to illness is physically unable to travel

to the massage establishment; or (3) as a service for a business or other entity who seeks to provide massages to employees as part of a “wellness” or health awareness program or event on a limited or infrequent basis with seven (7) days notice to the city through the city clerk’s office, provided that such massages are administered only in areas of a building or premises fully open to view and the individual receiving the massage is fully clothed. Unless otherwise prohibited by state or federal laws regarding privacy, if any outcall massage is performed under subpart (2) or (3), a record of the date and hour of each treatment, and the name and address of the customer or client, and the name of the employee administering such treatment and the type of treatment administered, as well as the nature of the physical defect, incapacity or illness of the client or customer shall be kept by the licensee or person or employee designated by the licensee. Such records shall be open to inspection by officials charged with the enforcement of public health laws. The information furnished or secured as a result of any such inspection shall be confidential. Any unauthorized disclosure or use of such information by an employee of the city shall be unlawful.

(f) It shall be unlawful for any massage service to be carried on within any cubicle, room, booth, or any area within a massage establishment which is fitted with a door capable of being locked. Doors shall be provided with a sign, light or other signaling device to indicate when the cubicle, room, booth or area is occupied and a massage is being provided.

#### **Sec. 20-11. Penalty for violations.**

Every person, except those persons who are specifically exempted by this chapter, whether acting as an individual owner, employee of the owner, operator or employee of the operator, or whether acting as a mere agent or independent contractor for the owner, employee or operator, or acting as a participant or worker in any way directly or indirectly who gives massages or operates a massage establishment or any of the services defined in this chapter without first obtaining a license or permit to do so from the city and paying a fee or who shall violate any provisions of this chapter shall be guilty of a misdemeanor and upon conviction such person shall be punished as provided in section 1-11. Any violation of this chapter is hereby declared to be a public nuisance per se, and may be abated by order of any court of competent jurisdiction.

## **ARTICLE II. BUSINESS LICENSE\***

#### **Sec. 20-26. Required.**

No person shall engage in or carry out the business of massage unless he has, or is engaged in activity as permitted under, a valid massage business license issued by the city pursuant to the provisions of this chapter for each and every separate office or place of business conducted by such person.

#### **Sec. 20-27. Application.**

(a) *Filing, fee.* Every applicant for a license to maintain, operate, or conduct a massage establishment shall annually file an application under oath with the city upon a form provided by the city clerk and pay a nonrefundable annual license fee as set from time to time by resolution of the council, which such fee shall also include a charge based on the number of individual massage

therapists to be employed at the establishment, and as to each such massage therapist a permit under Article III below shall also be applied for at the same time as the establishment license.

(b) *Inspections of premises.* Copies of the application shall within five (5) days also be referred to the department of building and safety and the fire department. The departments shall within thirty (30) days inspect the premises proposed to be operated as a massage establishment and shall make written verification to the city clerk by the building official and fire chief or code official concerning compliance with the codes of the city that they administer. The inspections shall be conducted by personnel as determined to be appropriate by each department, and may include additional inspections or re-inspections by additional personnel to determine compliance.

(c) *Investigation of applicants.* The application shall further be referred to the police department for investigation of the applicant's character and qualifications.

(d) *Contents.* Each application shall contain the following information:

(1) A definition of service to be provided;

(2) The location, mailing address and all telephone numbers where the business is to be conducted;

(3) The name and residence address of the applicant:

a. If the applicant is a corporation, the names and residence addresses of each of the officers and directors of the corporation and of each stockholder owning more than ten (10) percent of the stock of the corporation, each of which shall be considered to be an applicant under this chapter, and the address of the corporation itself, if different from the address of the massage establishment;

b. If the applicant is a partnership, the names and residence addresses of each of the partners including limited partners, each of which shall be considered to be an applicant under this chapter, and the address of the partnership itself, if different from the address of the massage establishment;

c. If the applicant is a limited liability company, the names and addresses of each member, manager and assignee of membership interest, each of which shall be considered to be an applicant under this chapter, and the address of the limited liability company, if different from the address of the massage establishment.

(4) The prior addresses of the applicant for preceding ten (10) years;

(5) Proof that the applicant is at least eighteen (18) years of age;

(6) Applicant's height, weight, color of eyes and hair, and sex;

(7) Copy of identification such as driver's license and social security card, if any;

(8) One (1) portrait photograph of the applicant at least two (2) inches by two (2) inches and a complete set of applicant's fingerprints which shall be taken by the police chief. If the applicant is a corporation, one (1) portrait photograph at least two (2) inches by two (2) inches of all officers and managing agents of the corporation and a complete set of the same officers' and agents' fingerprints which shall be taken by the police chief. If the applicant is a partnership, one (1) front-face portrait photograph at least two (2) inches by two (2) inches in size of each partner, including a limited partner in the partnership, and a complete set of each partner or limited partner's fingerprints which shall be taken by the police chief. The City of Novi Police Department shall collect from the applicant at the time said fingerprints are taken such applicable fingerprinting processing fees, as dictated by the Michigan State Police Department. The City of Novi Police Department shall thereafter forward said fingerprints and the applicable fingerprinting processing fee to the Michigan State Police Department. If the applicant is a limited liability company, one (1) front-face portrait photograph at least two (2) inches by two (2) inches in size of each member, manager and assignee of membership interest, and a complete set of each member's, manager's and assignee's of membership interest fingerprints which shall be taken by the police chief. If any of the applicants listed above are unable to make themselves available for fingerprinting by the police chief, then they

may have their fingerprints taken by an outside law enforcement agency in another jurisdiction in the United States and submitted to the police chief;

(9) Business, occupation, or employment of the applicant for three (3) years immediately preceding the date of application, identifying the time period, address and telephone number for each business, occupation or employment;

(10) The massage or similar business license history of the applicant; including whether such person, in previously operating in this or another city or state has had a business license revoked or suspended, the reason therefor, and the business activity or occupation subsequent to such action of suspension or revocation;

(11) All criminal convictions other than misdemeanor traffic violations, including the dates of convictions, nature of the crimes and place convicted;

(12) A written statement and information as to the applicant's character, experience and financial ability to meet the obligations and business undertakings for which the license is to be issued. In those cases where the applicant is borrowing funds for such purpose, the identification of the person or entity providing the funds, and information as to the financial ability of such other entity or person to meet such obligations and undertakings;

(13) The names, current addresses and written statements of at least three (3) bona fide permanent residents of the United States that the applicant is of good moral character. If the applicant is able, the statement must first be furnished from residents of the city, then the county, then the state and lastly from the rest of the United States. These references must be persons other than relatives and business associates;

(14) The name and address of each massage therapist who is or will be employed in the establishment;

(15) A diploma or certificate of graduation from a recognized school or other institution of learning wherein the method, profession and work of massage is taught, provided, however, that if the applicant will not himself engage in the practice of massage, he need not possess such diploma or certificate of graduation from a recognized school or other institution of learning wherein the method, profession and work of massage is taught;

(16) The name and address of any massage business or other establishment owned or operated by any person whose name is required to be given in subsection (3) of this section wherein the business or profession of massage is carried on;

(17) A description of any other business to be operated on the same premises or on adjoining premises owned or controlled by the applicant;

(18) If the facility is to be located in a proposed building for which site plan approval has not yet been obtained, or in an existing building that is to be remodeled, construction plans for the proposed building or remodeling, together with a conceptual plan showing the relationship of the building to the surrounding property and uses, and proposed building elevations;

(19) 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 the qualifications of the applicant for the license;

(20) Any other information pertinent to the application and operation of the proposed facility as may be required by this chapter;

(21) Such other identification and information necessary to discover the truth of the matters specified in this section as required to be set forth in the application.

Upon completion of the above provided form and the furnishing of all information required by this section the city clerk shall accept the application for the necessary investigations. The holder of a

massage establishment license shall notify the city clerk of each change in any of the data required by this section to be furnished within ten (10) days after such change occurs.

**Sec. 20-28. Facilities required.**

No license to conduct a massage establishment shall be issued unless an inspection by the city reveals that the establishment complies with each of the following minimum requirements:

(1) Construction of rooms used for toilets, tubs, steam baths and showers shall be made waterproof with approved waterproofed materials and shall be installed in accordance with the state construction code. Plumbing fixtures shall be installed in accordance with the state construction code:

a. Steam rooms and shower compartments shall have waterproof floors, walls and ceilings approved by the department of building and safety.

b. Floors of wet and dry heat rooms shall be adequately pitched to one (1) or more floor drains properly connected to the sewer. Exception: Dry heat rooms with wooden floors need not be provided with pitched floors and floor drains.

c. A source of hot water must be available within the immediate vicinity of dry and wet heat rooms to facilitate cleaning.

(2) The premises shall have adequate equipment for disinfecting and sterilizing nondisposable instruments and materials used in administering massages. Such nondisposable instruments and materials shall be disinfected after use on each patron.

(3) Closed cabinets shall be provided and used for the storage of clean linen, towels and other materials used in connection with administering massages. All soiled linens, towels and other materials shall be kept in properly covered containers or cabinets, which containers or cabinets shall be kept separate from the clean storage areas.

(4) Toilet facilities shall be provided in convenient locations. When employees and patrons of different sexes are on the premises at the same time separate toilet facilities shall be provided for each sex. A single water closet per sex shall be provided for each twenty (20) or more employees or patrons of that sex on the premises at any one time. Urinals may be substituted for water closets after one (1) water closet has been provided. Toilets shall be designated as to the sex accommodated therein.

(5) 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 and a dispenser and with sanitary towels.

(6) All electrical equipment shall be installed in accordance with the requirements of the state construction code.

(7) 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, whenever such inspection is deemed necessary by the police or health departments.

**Sec. 20-29. Grounds for grant or denial.**

In determining whether to grant or deny a license for a massage establishment, the city clerk shall consider:

(1) Whether the correct license 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 applicant's experience in managing a massage establishment or in managing similar establishments;
- (3) The applicant's general business management experience;
- (4) The applicant's general business reputation;
- (5) The applicant's moral character;
- (6) Whether the applicant if an individual, any of the stockholders holding more than ten (10) percent of the stock of the corporation or any of the officers and directors if the applicant is a corporation, any of the partners including limited partners if the applicant is a partnership, any of the members, managers or assignees of membership interest if the applicant is a limited liability company, or the holder of any lien of any nature upon the business and/or the equipment used therein, and the manager or other person principally in charge of the operation of the business, have been convicted of any of the following offenses or convicted of an offense outside the state that would have constituted any of the following offenses if committed within the state;
  - a. An offense involving the use of force and violence upon the person of another that amounts to a felony;
  - b. An offense involving sexual misconduct;
  - c. An offense involving narcotics, dangerous drugs or dangerous weapons that amounts to a felony.
- (7) The applicant's financial status and ability to build and operate the proposed facility.
- (8) The effects that the proposed facility would have upon the surrounding neighborhood and business establishments, including impacts upon residential areas, church and school districts;
- (9) Whether the operation, as proposed by the applicant, if licensed would comply with all applicable laws, including but not limited to the city's building, zoning and health regulations. If the facility is to be located in a proposed building for which site plan approval has not been obtained, or in an existing building that is to be remodeled, the city clerk may give conditional approval of a license, contingent upon the granting of a final certificate of occupancy for the facility;
- (10) Whether the applicant has knowingly made any false, misleading, or fraudulent statement of fact in the license application or in any document required by the city in conjunction therewith;
- (11) Whether the applicant has had a massage business, massage therapist, or other similar permit or license denied, revoked, or suspended by the city or any other state or local agency within five (5) years prior to the date of the application;
- (12) Whether the applicant if an individual, any of the officers or directors if the applicant is a corporation, any of the partners including limited partners if the applicant is a partnership, any of the members, managers or assignees of membership interest if the applicant is a limited liability company, and the manager or other person principally in charge of the operation of the business, is not over the age of eighteen (18) years.
- (13) Such other considerations as the city clerk may deem proper, provided such considerations are reasonable under the circumstances.

#### **Sec. 20-30. Approval or denial of application.**

The city shall act to approve or deny an application for a license under this article within a reasonable period of time and in no event shall the city act to approve or deny the license later than ninety (90) days from the date that the application was accepted by the city clerk.

#### **Sec. 20-31. Display.**

Every person, corporation, partnership, or association licensed pursuant to this article shall display such license in a prominent place.

**Sec. 20-32. Multiple locations of business.**

Should any massage business have more than one (1) location where the business of massage is pursued, then a license stating both the address of the principal place of business and of the other locations shall be issued by the city clerk upon the tender of a license fee as set by resolution of the council. Licenses issued for other locations shall terminate on the same date as that of the principal place of business, regardless of the date of issuance.

**Sec. 20-33. Sale, transfer, change of location of establishment.**

Upon sale, transfer or relocation of a massage establishment, the license therefor shall be null and void unless approved as provided in section 20-27 provided, however, that upon the death or incapacity of the licensee or any colicensee of the massage establishment, any heir or devisee of a deceased licensee or any guardian of an heir or devisee of a deceased licensee may continue the business of the massage establishment for a reasonable period of time not to exceed sixty (60) days to allow for an orderly transfer of the license.

**Sec. 20-34. Transferability.**

No license shall be transferable except with the consent of the city by approval of the city clerk. An application for such transfer shall be in writing and shall be accompanied by the fee required in section 20-27. The written application for such transfer shall contain the same information as requested in this article for initial application for the license.

**Sec. 20-35. Operation under name or at place not specified.**

No person granted a license pursuant to this article shall operate the massage establishment under a name not specified in his license nor shall he conduct business under any designation or location not specified in his license.

**Sec. 20-36. Expiration.**

Every license issued pursuant to this article will terminate December 31 of each year unless sooner suspended or revoked.

**Sec. 20-37. Revocation, suspension.**

Any license issued for a massage establishment may be revoked or suspended after notice and a hearing for good cause or in any case where any of the provisions of this chapter are violated or where any employee of the licensee, including a massage therapist, is engaged in any conduct which violates any of the state or local laws or ordinances at the licensee's place of business and the licensee has actual or constructive knowledge by due diligence. Such license may also be revoked or suspended after notice and hearing, upon the recommendations of the county health department that

such business is being managed, conducted or maintained without regard to proper sanitation and hygiene. Revocation proceedings shall be conducted by an administrative hearing officer appointed by the council by resolution. Upon appointment, such individual shall serve as requested. The qualifications of the hearing officer shall include familiarity with building and health codes or other state or local laws or ordinances. The hearing officer shall provide notice of the hearing to the applicant, who shall be given opportunity to be heard and to present evidence on his behalf directly or by authorized representative(s). The notice and hearing shall occur within a reasonable time. Consistent with the provisions of Chapter 1 of this code, Sec. 1-12, the decision of the hearing officer may be appealed to the city council.

### **ARTICLE III. MESSAGE THERAPIST PERMIT**

#### **Sec. 20-51. Required.**

No person shall practice massage as a massage therapist, employee or otherwise, unless he has secured a valid and subsisting massage therapist's permit issued to him by the city pursuant to the provisions of this article.

#### **Sec. 20-52. Application.**

Application for a massage therapist's business permit shall be made to the city clerk by the holder of the establishment license as set forth in Article II and shall be made at the same time and in the same manner as provided therein, except where the massage therapist is not employed by the establishment at the time of its annual application, in which case the application shall be made and a massage therapist's license secured before the massage therapist may engage in any activity regulated under this ordinance, and shall be accompanied by the annual nonrefundable massage therapist's permit fee as set from time to time by resolution of the council. The application shall contain but not be limited to the following:

- (1) The business address and all telephone numbers where the massage is to be practiced;
- (2) Name and residence address, and all names, nicknames and aliases by which the applicant has been known, including the two (2) previous addresses immediately prior to the present address of the applicant;
- (3) Social security number, driver's license number, if any, and date of birth;
- (4) Applicant's weight, height, color of hair and eyes, and sex;
- (5) Written evidence that the applicant is at least eighteen (18) years of age;
- (6) A complete statement of all convictions of the applicant for any felony or misdemeanor or violation of a local ordinance, except misdemeanor traffic violations;
- (7) A complete set of the applicant's fingerprints which shall be taken by the City of Novi Police Department. The City of Novi Police Department shall collect from the applicant at the time said fingerprints are taken such applicable fingerprinting processing fees, as dictated by the Michigan State Police Department. The City of Novi Police Department shall thereafter forward said fingerprints and the applicable fingerprinting processing fee to the Michigan State Police Department;
- (8) Two (2) front-face portrait photographs taken within thirty (30) days of the date of application and at least two (2) inches by two (2) inches in size;

- (9) The name and address of the recognized school attended, the dates attended and a copy of the diploma or certificate of graduation awarded the applicant showing the applicant has completed not less than five hundred (500) hours of instruction;
- (10) Proof of current basic certification by International Myomassethics Federation (IMF), the American Massage Therapy Association (AMTA), the Associated Bodywork and Massage Professionals (ABMP), or other national massage therapy organization with comparable certification requirements;
- (11) The massage or similar business history and experience ten (10) years prior to the date of application, including but not limited to whether or not such person in previously operating in this or another city or state under license or permit has had such license or permit denied, revoked, or suspended and the reasons therefor, and the business activities or occupations subsequent to such action of denial, suspension or revocation;
- (12) The names, current addresses and written statements of at least five (5) bona fide permanent residents other than relatives, of the United States that the applicant is of good moral character. If the applicant is able, the statement must first be furnished from residents of the city, then the county, then the state and lastly from the rest of the United States;
- (13) A medical certificate signed by a physician licensed to practice in the state within seven (7) days of the date of the application stating that the applicant was examined by the certifying physician and that the applicant is free of communicable disease. The additional information required by this subsection shall be provided at the applicant's expense;
- (14) Such other information, identification and physical examination of the person deemed necessary by the police chief in order to discover the truth of the matters required by this section to be set forth in the application;
- (15) 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 the qualifications of the applicant for the permit;
- (16) Written declaration by the applicant, under penalty or perjury that the foregoing information contained in the application is true and correct, such declaration being duly dated and signed in the city.

**Sec. 20-53. Waiver of educational requirement.**

The city shall waive the requirements of subsection 20-52(9) if the applicant furnishes satisfactory evidence that he attended not less than five hundred (500) hours of instruction in a school within or without this state or in any foreign country that provides education substantially equal to or in excess of the educational requirements of this article.

**Sec. 20-54. Grounds for denial.**

The city shall issue a permit for a massage therapist, after determination by the city clerk that requirements for a massage therapist permit described by this article are met unless it finds:

- (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 applicant has been convicted of any of the following offenses or convicted of an offense outside the state that would have constituted any of the following offenses if committed within the state:

- a. An offense involving the use of force and violence upon the person of another that amounts to a felony;
  - b. An offense involving sexual misconduct;
  - c. An offense involving narcotics, dangerous drugs or dangerous weapons that amounts to a felony.
- The city may issue a permit to any person convicted of any of the crimes described in subsection (2) of this section if it finds that such conviction occurred at least five (5) years prior to the date of the application and the applicant has had no subsequent felony convictions of any nature and no subsequent misdemeanor convictions for crime mentioned in this section;
- (3) 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;
  - (4) The applicant has had a massage business, massage therapist, or other similar permit or license denied, revoked, or suspended by the city or any other state or local agency within five (5) years prior to the date of the application;
  - (5) The applicant is not over the age of eighteen (18) years.

**Sec. 20-55. Approval or denial of application.**

The city shall act to approve or deny an application for a permit under this article within a reasonable period of time and in no event shall the city act to approve or deny the permit later than ninety (90) days from the date that the application was accepted by the city clerk.

**Sec. 20-56. Posting.**

Every massage therapist shall post the permit required by this article in his work area.

**Sec. 20-57. Transferability.**

No permit shall be transferable except with the consent of the city and ratified by approval of the city clerk. An application for such transfer shall be in writing and shall be accompanied by the fee required in section 20-52. The written application for such transfer shall contain the same information as requested in this article for initial application for the permit.

**Sec. 20-58. Expiration.**

Every permit issued pursuant to this article will terminate December 31 of each year unless sooner suspended or revoked.

**Sec. 20-59. Revocation.**

A massage therapist permit issued by the city clerk shall be revoked or suspended where it appears that the massage therapist has been convicted of any offense which would be cause for denial of a permit upon an original application, has made a false statement on an application for a permit, or has committed an act in violation of this chapter. Such revocation proceedings shall be held by the city manager within a reasonable time after notice of time and place of hearing and notice of cause for revocation.

**Sec. 20-60. Preemption; exemption.**

The requirements of this Article II relating to the issuance of a permit for a massage therapist shall not apply to an individual licensed as a massage therapist, as defined herein, under the laws of the State of Michigan, including the Public Health Code, 1978 PA 368, as amended, to the extent such law expressly preempts this Article. However, for each such individual employed by a licensee hereunder in a massage establishment as defined herein, the licensee shall provide to the city clerk:

- a. The name and address of each massage therapist who is or will be employed in the establishment;
- b. A copy of the license issued to each such massage therapist; and
- c. A copy of the driver's license or other proof of identification for the massage therapist.

**PART II.**

**Savings Clause.** The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

**PART III.**

**Severability.** Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

**PART IV.**

**Effective Date: Publication.** The provisions of this Ordinance shall become effective fifteen (15) days after its adoption and shall be published within 15 days of its adoption by publication of a brief notice in a newspaper circulated in the City, stating the date of enactment and the effective date of the ordinance, a brief statement as to the subject matter of this Ordinance and such other facts as the Clerk shall deem pertinent, and that a copy of the Ordinance is available for public use and inspection at the office of the City Clerk.

MADE, PASSED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF NOVI,  
OAKLAND COUNTY, MICHIGAN, ON THE \_\_\_ DAY OF \_\_\_\_\_, 2008.

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DAVID B. LANDRY – MAYOR

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MARYANNE CORNELIUS – CITY CLERK

Ayes:  
Nays:  
Abstentions:  
Absent:

**CERTIFICATION OF ADOPTION**

I hereby certify that the foregoing is a true and complete copy of an Ordinance passed at a \_\_\_\_\_ meeting of the Novi City Council, held on the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
MARYANNE CORNELIUS – CITY CLERK

Adopted:  
Published:  
Effective:

1044731