



CITY of NOVI CITY COUNCIL

**Agenda Item 2
April 5, 2010**

SUBJECT: Consideration to adopt Ordinance Amendment No. 10-120.11, an ordinance to amend the City of Novi Code of Ordinances, Chapter 20, "Massage," to add a definition of "Chair massage" and to revise regulations for "outcall massages." FIRST READING

SUBMITTING DEPARTMENT: City Clerk *m.c.*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION: The City's massage ordinance, Chapter 20 of the City's Code of Ordinances, requires that massages in the City of Novi occur at a licensed massage establishment and be performed by a massage therapist licensed by the City of Novi. The ordinance in fact makes the practice of so-called "outcall" massages specifically illegal except under a limited number of circumstances—for example, where a patient is unable to come to a massage establishment, for hospitals and medical facilities, and for employee wellness and similar events. While there are certain limited exemptions from the operation of the ordinance for various practitioners (doctors, nurses, athletic trainers, barbers, and cosmetologists primarily), as it stands it does preclude even licensed massage therapists from giving massages on an outcall basis, and even where the massages are fairly limited in nature; it covers even so-called "chair massages"—massages of the hands, feet, neck, scalp, and shoulders, conducted in full public view and while the individual receiving the massage is fully clothed.

It has come to the City's attention that certain kinds of gatherings of groups of individuals often involve a limited massage offering as part of the program—a convention, for example, or a product demonstration, or an exposition.

The ordinance attached for the Council's consideration for first reading would permit chair massages and outcall massages under more frequent circumstances. It adds the definition of chair massage, and it adds a section on outcall massages that clarifies that massage therapists licensed by the City of Novi can perform chair massages outside of a licensed massage establishment and also outcall massages in places like an exposition facility or convention facility.

RECOMMENDED ACTION: Approve FIRST READING of Ordinance Amendment No. 10-120.11, an ordinance to amend the City of Novi Code of Ordinances, Chapter 20, "Massage," to add a definition of "Chair massage" and to revise regulations for "outcall massages."

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

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

STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF NOVI
ORDINANCE NO. 10-120.11

AN ORDINANCE TO AMEND THE CITY OF NOVI CODE OF ORDINANCES, CHAPTER 20, "MASSAGE," TO ADD A DEFINITION OF "CHAIR MASSAGE" AND TO REVISE REGULATIONS FOR "OUTCALL MESSAGES."

THE CITY OF NOVI ORDAINS:

PART I.

That Chapter 20, "Massage," Article I, "In General," Section 20-1, "Definitions," of the City of Novi Code of Ordinances, is hereby amended to add a definition of "Chair massage," to read as follows:

ARTICLE I. IN GENERAL

Sec. 20-1. Definitions.

Chair massage: A massage limited to the head, shoulders, scalp, neck, hands, and/or feet and conducted in an area open to the public and open to view.

PART II.

That Chapter 20, "Massage," Article I, "In General," Section 20-2, "Exemptions," of the City of Novi Code of Ordinances, is hereby amended to read as follows:

ARTICLE I. IN GENERAL

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

PART III.

That Chapter 20, "Massage," Article I, "In General," Section 20-10, "Unlawful Acts," of the City of Novi Code of Ordinances, is hereby amended to delete subsection (e) and re-letter subsection (f) as "(e)," and to read as follows in its entirety:

ARTICLE I. IN GENERAL

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 subsections (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.~~

- (fe) 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.

PART IV.

That Chapter 20, "Massage," Article I, "In General," is hereby amended to add a new section, Section 20-12, entitled "Outcall Massage," which shall read as follows in its entirety:

ARTICLE I. IN GENERAL

Sec. 20-12. Outcall Massages.

As provided in Article II, massage shall be administered solely within an establishment licensed to carry on such business under this chapter, and it shall be unlawful for any person under this chapter to administer massage on an outcall basis; provided, however, that this restriction on outcall massage shall not apply to a massage therapist licensed under this chapter who (a) performs a chair massage as defined above outside of a massage establishment or (b) performs an outcall massage that is administered:

- (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) at a planned exposition facility or other approved convention facility in connection with an exposition, convention, or demonstration event, with seven (7) days notice to the city through the city clerk's office, provided that (i) the massages are administered only in areas of a building or premises fully open to view; (ii) the individual receiving the massage is fully clothed, and (iii) the individual is not charged a fee for the massage (i.e., it is complementary with attendance at the event or participation in a scheduled activity;

- (3) 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
- (4) 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 subsections (3) or (4), 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.

PART V.

That Chapter 20, "Massage," Article II, "Business License," Section 20-26, "Required," of the City of Novi Code of Ordinances, is hereby amended to read:

ARTICLE I. IN GENERAL

Sec. 20-26. Required.

No-Except as otherwise provided herein for outcall massages, 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.

PART VI.

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 VII.

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 VIII.

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 _____, 2010.

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 _____, 2010.

MARYANNE CORNELIUS – CITY CLERK

Adopted:
Published:
Effective:

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