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Clinton Township, MI Code of Ordinances

CHAPTER 850

Massage Establishment

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CROSS REFERENCES

Ordinances regulating licensing - see Michigan Charter Township Act (Act 359 of 1947)

Myommassologists - see M.C.L.A. Secs. 339.1701 et seq.

Fines and penalties; minimum wages - see M.C.L.A. Sec. 408.398

Alcoholic beverages - see GEN. OFF. Ch. 608

Safety, sanitation and health - see GEN. OFF. Ch. 676

Sex related offenses - see GEN. OFF. Ch. 680

850.01 SHORT TITLE.

This chapter may be known and may be cited as the Charter Township of Clinton “Massage Establishment Ordinance.”

(Ord. 376. Passed 6-16-08; Ord. 423. Passed 6-13-16.)

850.02 INTENT.

The purpose of this chapter is to promote the public health, safety, and welfare by licensing and regulating massage establishments, massage schools, and other similar businesses and the persons working in such massage establishments. The Board of Trustees finds and determines that licensing standards pertaining to massage establishment activities are necessary to protect the public health and safety and the personal safety of massage therapist/myomassologist. The Board of Trustees further finds that public health and safety is best served by the adoption of a model ordinance providing for regulation of massage activities in a manner that is consistent throughout the Charter Township of Clinton. The purpose of this ordinance is to insure the protection of the public health and safety and the personal safety of massage therapist/myomassologist through the establishment of certain licensing standards pertaining to massage therapy business activities within the Township and to recognize massage therapy as a legitimate business occupation and health enhancement service. The Township Board further recognizes that human trafficking is a significant problem in the United States, that it can involve the use of massage establishments or massologist activities as a front where victims are forced into involuntary servitude, deceived into debt bondage and forced against their will to perform sex acts. The Federal government has passed the Trafficking Victims Protection Act of 2000 and statistics have been accumulated by the United States Department of State as well as the United States Department of Justice and independent researchers and analysts. Human trafficking is ranked behind only drugs and arms trafficking as profitable criminal activity. It is estimated that more than eighty percent of trafficking victims are female and eighty percent of trafficking involves sexual exploitation. Physical injury and disease are other consequences of trafficking exploitation. Substantial portions of persons who are subject to trafficking are under the age of eighteen. Numerous studies exist outlining the various aspects of human trafficking including trafficking within the United States warranting the adoption of ordinance provisions in order to assist in detecting possible human trafficking. The holding of any massage business license is hereby declared to be a privilege, and not a right. The provisions of this chapter shall be held to be the minimum requirements adopted for the promotion of the public health, safety, and general welfare of the people of the Township receiving services from massage establishments.

(Ord. 376. Passed 6-16-08; Ord. 423. Passed 6-13-16.)

850.03 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- (a) “Accommodate.” Providing massage to an individual within the confines of a single room.
- (b) “Employee.” Any person who renders any service in connection with the operation of a massage parlor, massage school, or other similar business and receives consideration for such services, either from the operator of the establishment or its patrons. Employees include but are not limited to masseur, and the term “employee” includes leased personnel, contractors, and similar employment relationships.
- (c) “Licensee.” The person or entity to whom a license has been issued to either operate a massage establishment or to perform massages in the Charter Township of Clinton.
- (d) “Massage.” The manipulation of body muscle or tissue through any method of applying pressure on or friction against or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external soft parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance, with or without such supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations commonly used in the practice of massage, under such circumstances that it is reasonably expected that the person providing the massage shall receive consideration therefor.

“Massage” does not include any medical diagnosis, acupuncture or the implementation of a procedure by a person who is licensed as a health care provider in the State of Michigan in good standing such as a physician, registered nurse, physical therapist, occupational therapist, chiropractic professional, or a licensed barber or cosmetologist.

(e) “Massage establishment.” Any building, room, place, or establishment where massage is practiced for consideration upon the human body by anyone not a duly licensed physician, osteopath, chiropractor, registered nurse, practical nurse operating under a physician’s directions, registered speech pathologist, or physical or occupational therapist who treats only patients recommended by a licensed physician and operates only under such physician’s direction, whether with or without the use of mechanical, therapeutic, or bathing devices. A “massage establishment” shall include but is not limited to massage schools, massage parlors, health spas, spas, sauna baths, Turkish bathhouses, and steam baths, where massage services are offered or practiced. This term shall not include a regularly- licensed hospital, medical clinic, nursing home, or any other medical facilities operated by a State-licensed professional such as chiropractic, physical therapy and occupational therapy offices where massages are provided as incidental or accessory uses to the main use of the premises; it shall not include transient workplace locations during normal business hours where the massage is performed upon employees of the workplace pursuant to a policy of medical insurance or as a benefit provided by the employer as part of a workplace health program; and it shall not include an organization operating a community center, swimming pool, tennis court, or other educational, cultural, recreational, and athletic facilities for the welfare of the residents of the area.

(f) “Masseur.” Any person who engages in the practice of massage who holds a valid license issued by the State.

(g) “Massage therapist/myomassologist.” Any person, male or female, who engages in the practice of massage, myomassology, massage therapy, and/or massology holding a valid State massage license. The term shall be used as the gender-neutral equivalent of masseur and masseuse, and shall include any person who administers to another person an alcohol rub,

fomentation, bath, electric, or magnetic massage procedure, manipulation of the body, or other similar procedure.

(h) “Outcall massage service.” Any individual or business that engages in or provides massages at a location designated by the customer, client, or patron, rather than at a massage establishment.

(i) “Owner.” A person who conducts or owns a massage parlor, massage school, or other similar business.

(j) “Patron.” Any individual who receives a massage at a massage parlor, massage school, or other massage establishment, but not physical therapy or chiropractic services at the offices of a properly licensed health care professional, under such circumstances that it is reasonably expected that he or she shall provide consideration therefor.

(k) “Township.” The Charter Township of Clinton.

(Ord. 376. Passed 6-16-08; Ord. 423. Passed 6-13-16.)

850.04 MASSAGE ESTABLISHMENT LICENSE REQUIRED.

It shall be a violation of this chapter for any person to own or operate a massage establishment, including any massage school, without a license. Existing massage establishments shall submit an application for a license within sixty days of enactment of this chapter.

(Ord. 376. Passed 6-16-08; Ord. 423. Passed 6-13-16.)

850.05 APPLICATION FOR ESTABLISHMENT LICENSE.

(a) Any person desiring a license to operate a massage establishment shall file with the Township Clerk an application, under oath, on a form provided by the Township Clerk. Applications shall include the following information:

(1) The full name of the applicant and whether the applicant is an individual or a corporation, partnership or other business entity;

(2) The name under which the establishment will be operated;

(3) The business address and all telephone numbers where the establishment will be operated;

(4) A copy of the signed lease for the business premises and written consent of the owner to utilize the premises for the described purpose, if the premises are not owned by the applicant;

(5) The full name, address, and phone number of each individual who will manage or be principally in charge of the operation of the establishment, and a complete list of the names and residence addresses of all massage therapists/myomassologists and employees to be utilized by the business, along with documentation establishing that the massage therapist/myomassologists meet the training and certification requirements of this chapter for obtaining an individual massage therapist/myomassologist license, with such information to be updated immediately with any new or changed information not found on the initial list;

(6) A detailed summary or description of the nature and type of services to be provided at the establishment, and whether any off-site services will be provided and, if so, the proposed locations;

(7) The days and times the establishment will be open to provide services;

(8) A release and authorization for the Township, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth on the application and the qualifications of the applicant for the license;

(9) Such other information as may be required by the Clerk;

(10) A written declaration by the applicant, given under oath or affirmation, under penalty of perjury, that the information contained in and attached to the application is true and correct; and

(11) The names, addresses, citizenship and/or visa status verification of persons who will perform massage therapist/myomassologist services. The applicant shall also disclose whether any indebtedness exists between the applicant or any agents or employees of the applicant and any proposed massage therapist/myomassologist disclosing the amount of debt and the method of repayment. The applicant shall also disclose whether the applicant or agents are providing or assisting in providing either dwelling space or transportation for any existing or proposed massage therapist/myomassologist. Any fees or compensation of any kind being paid by any proposed massage therapist/myomassologist for the procurement of employment shall also be fully disclosed. Circumstances shall be fully explained, including terms of payment and all contract documents or other documents evidencing any relationship and financial obligation shall be fully disclosed.

(b) Additionally, if the applicant is an individual, the application must include the following information:

(1) The applicant's addresses for the previous three years;

(2) A listing of the applicant's previous related experience, including but not limited to whether the applicant has previously held any license as a massage therapist/myomassologist, the location for which such a license was held, the status of such license and, if such license was suspended or revoked, the reasons therefor;

(3) The applicant's height, weight, eye and hair color and sex;

(4) The applicant's birth date accompanied by written proof, consisting of either a birth certificate, driver's license, or passport;

(5) A listing of all of the applicant's criminal convictions and/or guilty pleas, if any, other than civil infractions, fully disclosing the jurisdictions in which convicted or in which the plea was tendered, the offense on which originally arrested and the offense for which ultimately convicted or for which the plea was tendered, and the date of same along with the resulting penalty; and

(6) The names, addresses and telephone numbers of three character references for the applicant. These references shall not be relatives of the applicant.

(c) Additionally, if the applicant is a corporation, partnership, or other business entity, the application shall include the following information about each individual who owns at least a ten

percent share in the corporation or interest in the partnership or other business entity or serves as a director or officer of the corporation or who holds a lien on the establishment or on the equipment therein, each of whom shall be considered to be an applicant:

(1) The individual's full name and residence address;

(2) The individual's addresses for the previous three years;

(3) A listing of the individual's business, occupation, or employment for the previous three years, identifying the time period, address, and telephone number for each, and a listing of previous related experience, including but not limited to whether the individual has ever held any license as a massage therapist/myomassologist, the location for which any such license was held, the status of such license, and if such license was suspended or revoked, the reasons therefor;

(4) The individual's height, weight, eye and hair color and sex;

(5) The individual's birth date accompanied by written proof, consisting of either a birth certificate, driver's license, or passport;

(6) A listing of all of the individual's criminal convictions and/or guilty pleas, if any, other than civil infractions, fully disclosing the jurisdictions in which convicted or in which the plea was tendered, the offense on which originally arrested, and the offense for which ultimately convicted or for which the plea was tendered and the date of same along with the resulting penalty;

(7) The names and addresses of three character references for the individual. These references shall not be relatives of the individual; and

(8) The name and address of any business that provides massage services, whether incidentally or otherwise, owned or operated by the applicant or any of the individuals required to submit their personal information pursuant to this subsection.

(d) All applications shall be accompanied by the following items:

(1) A nonrefundable application fee in an amount set by the Township's fee schedule ordinance;

(2) If applicable, proof that an assumed name certificate has been filed with the Macomb County Clerk or the State of Michigan;

(3) If applicable, the articles of incorporation and a certificate of good standing issued by the State of Michigan; and

(4) Two front face portrait photographs, at least two inches by two inches, and a complete set of fingerprints taken by the Clinton Township Police Department for each individual required to submit personal information pursuant to subsections (b) and (c) or fingerprint records completed by the State Police in connection with the application for a State license, hereof, except that, in lieu of photos of all corporate shareholders, a corporate applicant may submit photographs of all officers and managing agents of said corporation and a complete set of the same officers' and agents' fingerprints. In the case of a partnership, photographs and fingerprints for each partner are required.

(e) It shall be unlawful for any person to knowingly make any false, fraudulent or untruthful statement, either written or oral, or in any way knowingly to conceal any material fact or to give

or use any fictitious name in applying for a license under this chapter. Any license obtained by violation of this subsection shall be void.

(f) Each applicant shall certify that it will make available any person performing massage therapist/myomassologist activities upon the premises at the premises for interview with the Township Police Department upon reasonable notice. Such person shall be subject to interview by the Police Department outside of the presence of the establishment owners, their employees or representatives or third persons. If such persons are unable to communicate sufficiently in the English language the applicant shall be responsible for the payment for translator services on behalf of the Police Department for a translator as selected by the Police Department.

(Ord. 376. Passed 6-16-08; Ord. 423. Passed 6-13-16.)

850.06 DUTIES OF THE TOWNSHIP CLERK REGARDING APPLICATIONS FOR ESTABLISHMENT LICENSES.

(a) Upon receipt of a properly and fully completed application for a license, the Township Clerk shall forward a copy of each application to the following for their review, investigation, and recommendation in accordance with Sections 850.07 and 850.08:

- (1) Chief of Police;
- (2) Building Official;
- (3) Fire Marshal; and
- (4) Township Planner.

(b) Except as provided in subsection (d) hereof, upon receipt of favorable recommendations from the investigating bodies mentioned under this chapter, the Township Clerk shall issue a license to the applicant.

(c) Upon issuance of a license, the Township Clerk shall notify each of the following of the issuance:

- (1) Chief of Police;
- (2) Building Official;
- (3) Fire Marshal; and
- (4) Township Planner.

(d) Denial. The Township Clerk may deny an application for any of the following reasons:

(1) The applicant has been convicted of, or pled guilty to, any crime involving dishonesty, fraud, or deceit, or has pled to or been convicted of any offense involving the use of force or violence upon the person of another, or an offense involving sexual misconduct, or an offense involving narcotics, controlled substances, or dangerous weapons.

(2) The operation or facility, as proposed in the application, would not comply with all applicable laws, including, but not limited to, the Township's building, fire, zoning, and health ordinances.

(3) The applicant made a false, misleading, or fraudulent statement of fact or omission in the license application or any document required by the Township in conjunction therewith, or has failed to submit all required information or the required fee.

(4) The applicant has had a massage business, massage license, or other similar permit or license denied, revoked, or suspended by the Township or any other State or local agency.

(5) The applicant is not at least eighteen years of age by the date of the application.

(6) The applicant has not provided all of the information required to be submitted with an application pursuant to this chapter.

(7) Failure to make available for interview at any time any massage therapist/myomassologist or proposed massage therapist/myomassologist.

(8) If circumstances exist which evidence indebtedness owing between the applicant or any person with any ownership interest in the business and any existing or proposed massage therapist/myomassologist or employee which requires payment of more than twenty-five percent of net wages per week as a term or condition of payment.

(e) If the Township Clerk denies an application, he or she shall notify the applicant by regular mail addressed to the applicant at the address shown on the application. Such notice shall specify the following:

(1) Notice of the proposed action;

(2) Reasons for the proposed action;

(3) A statement that the individual or entity has the right to appeal the decision to the Zoning Board of Appeals by submitting a written application to the Township Clerk.

(4) A statement that the individual or entity may present evidence at the appeal hearing and confront and cross-examine witnesses.

(Ord. 376. Passed 6-16-08; Ord. 423. Passed 6-13-16.)

850.07 INVESTIGATION AND RECOMMENDATION OF THE CHIEF OF POLICE.

(a) The Chief of Police or his or her representative shall have sixty days to investigate the application and the background of the applicants. The Chief of Police shall cause to be conducted an investigation of the premises where the massage business is to be carried on for the purpose of assuring that such premises comply with all the sanitation requirements as set forth in this chapter and with all Township ordinances relating to public health, safety, and welfare. All proposed and current employees are subject to interview under Section 850.05(f). Based on this investigation, the Chief of Police or his or her representative shall make either a favorable or unfavorable recommendation to the Township Clerk as to the issuance of the establishment license. If the recommendation is unfavorable, the Chief of Police or his or her representative shall also provide a concise statement of the reasons for this recommendation.

(b) The Chief of Police or his or her representative may issue an unfavorable recommendation regarding the issuance of an establishment license if:

- (1) The operation, as proposed in the application, would not comply with all applicable laws;
- (2) Any individual required to submit personal information pursuant to Section 850.05(b) or (c) has been convicted of or pled guilty to any crime involving dishonesty, fraud, or deceit, or has pled to or been convicted of any offense involving the use of force or violence upon the person of another, or an offense involving sexual misconduct, or an offense involving narcotics, controlled substances, or dangerous weapons;
- (3) The applicant has made any false, misleading, or fraudulent statements of fact or material omissions in the application or in any document required to be submitted in conjunction with the application;
- (4) The applicant has, in any location, previously held a similar license and the license has previously been revoked or suspended;
- (5) Any individual required to submit personal information pursuant to Section 850.05(b) and (c) has not obtained the age of eighteen years by the date of application;
- (6) If circumstances exist which evidence indebtedness owing between persons required to submit information pursuant to Section 850.05(b) and any existing or proposed massage therapist/myomassologist which requires payment of more than twenty-five percent of gross wages per week as a term or condition of payment; or
- (7) Failure to make available for interview at any time any massage therapist/myomassologist or proposed massage therapist/myomassologist.

(Ord. 376. Passed 6-16-08; Ord. 423. Passed 6-13-16.)

850.08 INVESTIGATION AND RECOMMENDATION OF THE BUILDING OFFICIAL.

- (a) The Building Official, or his or her representative, shall have sixty days to inspect the premises to be utilized as an establishment within the meaning of this chapter. Based upon this investigation and inspection, the Building Official, or his or her representative, shall make either a favorable or unfavorable recommendation to the Township Clerk as to the issuance of an establishment license. If the recommendation is unfavorable, the Building Official, or his or her representative, shall also provide a concise statement of the reasons for his or her recommendation.
- (b) The Building Official or his or her representative shall make an unfavorable recommendation regarding the issuance of a license if the premises do not comply with each of the following requirements:
 - (1) A recognizable and legible sign shall be posted at the main entrance identifying the establishment as a massage business. All such signs shall comply with the applicable provisions of the Code of the Charter Township of Clinton;
 - (2) Minimum lighting shall be provided in accordance with the building code and, in addition, at least one artificial light of not less than sixty watts shall be provided in each enclosed room or booth where massage services are being performed on a patron;

- (3) Minimum ventilation shall be provided in accordance with the Building Code;
- (4) Equipment for disinfecting and sterilizing instruments used in performing the actual massage shall be provided;
- (5) Adequate massage facilities enabling the accommodation of at least two patrons shall be provided. Adequate facilities, for the purpose of this section, shall be defined as separate enclosed rooms, having doors capable of being closed but not locked;
- (6) Barrier-free dressing and toilet facilities with hot and cold running water shall be provided for patrons and employees. One toilet and one wash basin shall be provided by every massage establishment. If male and female patrons are to be accommodated simultaneously at a massage establishment, separate dressing and toilet facilities shall be provided for male and female patrons;
- (7) All of the physical facilities for the massage establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, bathtubs, steam or vapor rooms or steam or vapor cabinets, showers and toilet rooms shall be kept thoroughly cleaned; and
- (8) There shall be no entrance or exit way which provides direct access to another type of business, residence, or living quarters.

(Ord. 376. Passed 6-16-08; Ord. 423. Passed 6-13-16.)

850.09 USE OF LICENSE.

- (a) Each license issued under this chapter shall expire on December 31 of each year and must be renewed prior thereto in order to be valid.
- (b) Each license issued under this chapter, whether for the licensed establishment or for each massage therapist/myomassologist who performs massology services at the establishment, shall be conspicuously displayed upon a wall of the massage establishment which is in an area open to the public. All licenses shall be made available, upon request, for inspection by any patron, police officer, or Township official in order to confirm the information contained in the licenses, including photographic information which can be used to visually confirm the identity of a massage therapist/myomassologist. Within seventy-two hours of any change in fact, policy, or method which would alter the information provided in a license application, or on the license itself, the applicant/licensee shall notify the Township Clerk of such change(s) in writing.
- (c) It shall be unlawful for any person to fraudulently make use of, to his or her own or another's benefit, a license issued to him, her or another in accordance with this chapter.
- (d) It shall be unlawful for any person to counterfeit or forge or to deface or otherwise alter a license issued under the provisions of this chapter.
- (e) A license issued under this chapter is not transferable, separable, or divisible, and the authority conferred shall be conferred only upon the individuals named on, and whose photograph appears on, the license. Upon sale, transfer, or relocation of a massage establishment, the license therefore shall be null and void unless pre-approved by the Township Clerk. It shall be the duty of all owners or licensees having knowledge of the sale, transfer, or relocation of a

massage establishment to immediately report such sale, transfer, or relocation to the Township Clerk's office. The failure to do so shall result in an immediate suspension of the license. An application for transfer shall be in writing, shall contain the same information as required by this chapter for an initial application for a new license, and shall be accompanied by the same fee as required for an application for a new license.

(f) It shall be unlawful for any person operating an establishment to permit or allow an employee, student, or massage therapist/myomassologist or any person whatsoever to violate any of the terms of this chapter while on the premises of the establishment, and it shall be unlawful for any person at a licensed establishment to condone or allow any unlawful activity to occur on the licensed premises, whether within or outside the actual licensed building. It shall be the responsibility of an owner, operator, manager, or licensee to ensure that each person employed or engaged by him or her as a massage therapist has a valid massage therapist license issued pursuant to this chapter or otherwise pursuant to Public Act 471 of 2009.

(g) No person shall sell, give, dispense, provide, possess, or keep, or cause to be sold, given, dispensed, provided, possessed, or kept, any alcoholic beverage or controlled substances on the premises of any massage establishment.

(h) It shall be unlawful for any massage establishment to accommodate two or more patrons in the same room, except that two patrons may be accommodated in the same room if the two patrons knowingly and voluntarily request that their massage services be provided in the same room, and they execute a consent form indicating that they know each other and they each consent to obtaining massage services in the same room with the other patron.

(i) All massage establishments subject to this chapter are declared to be public places and during business hours shall not lock or obstruct the exits and entrances to the establishment or otherwise prevent free ingress or egress of persons.

(j) No massage establishment shall be kept open between the hours of 9:00 p.m. and 8:00 a.m.

(k) No massage establishment shall place, publish or distribute 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 an effort to induce any person to purchase or utilize massage services.

(l) A massage establishment shall have the premises supervised at all times when open for business. Any business rendering massage services shall have one person who is qualified and licensed as a massage therapist pursuant to Public Act 471 of 2009 as amended on the premises at all times while the establishment is opened. The licensee shall personally supervise the business, and shall not violate, or permit others to violate, any applicable provision of this chapter. The violation of any such provision by any agent or employee of the licensee may constitute a violation by the licensee if the licensee knew or should have known that such activity may occur. Any such violation by a licensee may also constitute a violation by the owner, president, and/or other supervisory official of the licensee, in his or her individual capacity, for permitting another to violate this chapter, if such individual knew or should have known that such activities were occurring or likely to occur. Any such violation may be the basis for suspending, revoking, or not renewing a license.

(m) The licensee or the person designated by the licensee of a massage establishment shall maintain a register of all persons employed or engaged as massage therapist/myomassologists. Included in the register will be a copy of each massage therapist/ myomassologist license. Such

register shall be available at the massage establishment for inspection by representatives of the Township and/or County or State health departments during regular business hours.

(n) Every patron shall furnish, and every licensee shall require that every patron furnish, proof of identity by showing a valid driver's license, voter registration certificate, state identification card, or equally reliable identification, and provide a date of birth. The identity and date of birth of every patron, the date and time of the massage, and the identity of the massage therapist/myomassologist administering the massage shall be recorded and maintained on the premises by the licensee for a period of three years and be available at the massage establishment for inspection by representatives of the Township and/or County or State health departments during business hours.

(o) Price rates for all services shall be prominently posted in the reception area in a location available to all prospective patrons.

(p) The premises of the massage establishment shall not be made available for accommodating any person as sleeping quarters. No beds, water mattresses, cots, or equipment designed for sleeping shall be permitted on the premises.

(q) It shall be unlawful for any person, in a massage establishment, to place his or her hand or hands upon, to touch with any part of his or her body, to fondle in any manner, or to massage, a sexual or genital part of any other person. Sexual or genital parts shall include the genitals, pubic area, anus, or perineum of any person, or the vulva or breasts of a female.

(r) It shall be unlawful for any person, in a massage establishment, to expose his or her sexual or genital parts, 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 parts, or any portions thereof, of any other person.

(s) No person granted a license pursuant to this chapter shall operate a massage establishment or as a massage therapist/myomassologist under a name not specified in the person's license, nor shall any licensee conduct business under any designation or location not specified in the licensee's license.

(Ord. 376. Passed 6-16-08; Ord. 384. Passed 2-23-09; Ord. 423. Passed 6-13-16.)

850.10 REGULAR INSPECTIONS; SANITATION AND SAFETY REQUIREMENTS.

(a) All premises used by a licensee under this chapter shall be periodically inspected by the Police Chief, Building Official, Fire Marshal, or their authorized representatives, for the safety of the structure and adequacy of the plumbing, ventilation, heating, and illumination. Police officers, code enforcement officials, and/or Building Department inspectors may at reasonable times during business hours, or during times when the licensed premises are occupied by an employee or owner of the massage establishment, make inspections of each massage business establishment for the purpose of determining compliance with the provisions of this chapter. A search warrant shall not be required for such inspections, in accordance with the opinion of the Michigan Supreme Court in *Gora v. Township of Ferndale*, 456 Mich 704 (1998). It is unlawful for any licensee to deny or refuse access to the premises or to hinder the official in any manner in the performance of his or her responsibilities under this chapter, and such refusal shall constitute

sufficient grounds for immediate revocation of a license granted under the provisions of this chapter. The following minimum standards shall be maintained:

(1) Walls shall be clean and painted with washable, mold-resistant paint in all rooms where water or steam baths are given, and (except in reception and administrative areas) shall be made of nonporous materials which may be readily disinfected;

(2) Floors shall be free from any accumulation of dust, dirt, or refuse;

(3) All equipment used in the massage operation shall be maintained in a clean and sanitary condition;

(4) Towels, linen, and items for personal use of masseurs and patrons shall be clean and freshly laundered. Towels, cloths, and sheets shall not be used for more than one patron. Heavy, white paper may be substituted for sheets provided that such paper is changed for every patron. Closed containers shall be provided for wet towels and waste material; and

(5) All equipment, shower stalls, toilets, lavatories, and other such accoutrements shall be regularly treated with disinfectants and shall be maintained in a clean and sanitary condition at all times.

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

(c) Lavatories or wash basins provided with both hot and cold running water shall be installed in either the toilet room or a vestibule. Lavatories or wash basins shall be provided with soap in a dispenser and with sanitary towels.

(d) Separate dressing room or locker room facilities shall be provided for the employees and patrons of different sex. The dressing room or locker room facilities shall be designated as to the sex permitted. If male and female patrons are to be served simultaneously at the massage establishment, separate massage rooms shall be provided and shall not be shared by male and female patrons, unless the consent required by Section 850.09(f) has been provided.

(e) All massage services enumerated in this chapter may be carried on in one cubicle, room, booth, or area within the massage establishment, but no massage services shall be performed in any room or area which is fitted with a door capable of being locked or barred.

(f) 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 advertising matter that depicts any portion of the human body that would reasonably suggest to prospective patrons that any service is available other than those services permitted by this chapter, or that employees or massage therapist/myomassologists are dressed in any manner other than described in subsection (h) hereof, nor shall any massage establishment indicate in the text of such advertising that any service is available other than the services permitted by this chapter.

(g) Licensees shall exercise every precaution for the safety of patrons. They shall watch for early signs of fatigue or weakness and immediately discontinue whatever form of service is being given upon the appearance of such signs.

(h) All employees and massage therapist/myomassologists must be modestly attired. Diaphanous, flimsy, transparent clothing is prohibited. Clothing must cover the employee's or massage therapist/myomassologist's torso at all times, shall not expose the navel cleft or navel, and shall cover the entire chest. Skirts and dresses are not permitted. The uniform shall include a photographic identification card which shall be worn whenever the employee or massage therapist/myomassologist is working.

(i) The skin and the hands of those attending patrons shall be clean and in healthy condition, and the nails shall be kept short. The hands shall be washed thoroughly with hot running water, using a proper soap or disinfectant, before giving a patron any service or treatment.

(j) All towels, tissues, sheets, or other coverings shall be used singularly for each patron and discarded for laundering or disposal immediately after use.

(k) Nondisposable tools of the trade shall be disinfected immediately after use upon one patron.

(l) The private parts of patrons must be covered when in the presence of any massage therapist/myomassologists or employees. Any contact with the patron's genital area is prohibited.

(m) No licensee shall knowingly allow any patron to be served when such patron is infected with any fungus or other skin infection, nor shall service be performed on any patron exhibiting skin inflammation or eruptions, unless a licensed physician has certified that such patron may be safely served under specific prescribed conditions.

(n) All employees and massage therapist/myomassologists must be made available for confidential interview with authorized representatives of the Police Chief, Building Official and/or Fire Marshal present on the premises at any time upon entry by the authorized representative.

(o) The terms, conditions, including loan balances, payment history of any loans or any other forms of indebtedness by applicant or its agents shall be fully disclosed to police upon request.

(Ord. 376. Passed 6-16-08.)

(p) Doors shall remain unlocked and the premises accessible during hours of operation. A sign "Open for Business" shall be present and clearly visible from the street with a dimension of at least 1' x 1'.

(Ord. 423. Passed 6-13-16.)

850.11 RENEWAL OF LICENSES; CRITERIA FOR NON-RENEWAL, SUSPENSION, OR REVOCATION.

(a) Any time after December 1 of the year in which the license expires, the licensee may file with the Township Clerk a written application to renew the license on a form to be furnished by the Township Clerk. The application shall contain the information required herein for an original license to the extent that such information would not be duplicative, and the application shall be accompanied by the correct fees. The applicant shall present, under oath, a written statement that the matters contained in the original application have not changed or, if they have changed,

specifically stating the changes that have occurred. The Township Clerk shall renew the license unless the Chief of Police, and where applicable, the Building Official finds that the requirements of this chapter for the issuance of a license are not met. All investigations shall be completed within twenty-one days, and a licensee may continue to operate as though properly licensed until such time as the Township Clerk renews or declines to renew the license.

(b) The Township Clerk may decide not to renew a license, to suspend a license, or to revoke a license based upon a determination by the Chief of Police, Fire Chief, or Building Official that any of the following exists:

(1) Failure to comply with all standards, plans, or agreements entered into in consideration for the issuance, transfer, or continuance of the license, or failure to comply with all agreements or consent judgments entered into subsequent to the issuance of the license.

(2) Violations of provisions of this chapter, State laws or local ordinances, including applicable codes and regulations, concerning health, safety, moral conduct, or public welfare, by any licensee or employee of a licensee.

(3) Maintenance of a nuisance upon or in connection with the licensed premises, including, but not limited to, any of the following:

A. Existing violations of building, electrical, mechanical, plumbing, zoning, health, fire, or other applicable regulatory codes;

B. A pattern of patron conduct in the neighborhood of the licensed premises which is in violation of the law and or disturbs the peace, order, and tranquility of the neighborhood;

C. Failure to maintain the grounds and exterior of the licensed premises, including litter, debris, or refuse blowing or being deposited upon adjoining properties;

D. Activity on the licensed premises without a required permit and/or activity which disturbs the peace, order, and tranquility in the neighborhood of the licensed premises; or

E. Any advertising, promotion, or activity in connection with the licensed premises which by its nature causes, creates, or contributes to disorder, disobedience to rules, ordinances, or laws, or contributes to the disruption of normal activity of those in the neighborhood of the licensed premises.

(4) Failure by the licensee to permit the inspection of the licensed premises by the Township's agents or employees in connection with the enforcement of this chapter.

(c) In addition to the foregoing provisions, the Township Clerk may decide to suspend, revoke, or not renew a license based upon the following considerations:

(1) Compliance with all applicable provisions of existing policy for new license applicants.

(2) Compliance with all standards and plans established and approved at the time of issuance.

(3) Tax considerations:

A. All licensees shall be held responsible for paying all real property taxes, personal property taxes, and other bills due the Township arising from their use and occupancy by their due dates each year.

B. All licensees renting or leasing the property in which their business is located shall be responsible for paying all personal property taxes and other bills due to the Township arising from their use of that property by their due dates each year.

(4) Failure to comply with provisions relating to indebtedness of any massage therapist/myomassologist.

(5) Failure to provide prompt access including providing for translator services or attempting to interfere with confidential communication between authorized representatives of the Township and any massage therapist/myomassologist.

(Ord. 376. Passed 6-16-08; Ord. 423. Passed 6-13-16.)

850.12 SUSPENSION OF LICENSE.

(a) Any license issued under this chapter may be suspended by the Township Clerk for a period not to exceed ninety days upon the investigation, recommendation, and approval of the Chief of Police, Building Official, or health inspector for any violation of this chapter by the licensee. The Township Clerk may also summarily suspend any license issued under this chapter for failure to provide the application information required by this chapter, or any other application-related offense or omission, until such time as the offense or omission is remedied by the licensee.

(b) Any establishment license issued under this chapter may be suspended by the Township Clerk for a period not to exceed ninety days upon the investigation, recommendation, or approval of the Chief of Police, for a violation of this chapter by an agent or employee of the massage establishment, provided the violation occurred on the massage establishment premises.

(c) Notice of suspension may be given by delivering the same to the licensee, by delivering the same to the establishment, or by depositing the same in the United States mail, postage prepaid, certified or registered mail, return receipt requested, addressed to the licensee at the address stated on the license application, and the notice shall be deemed given upon deposit of the notice in the United States mail.

(d) Suspension of a license shall be given effect ten days after written notice thereof is given to the licensee. The notice shall include the same information required elsewhere in this chapter for informing an applicant that a license application has been denied.

(e) Any suspension ordered by the Township Clerk may be appealed to the Zoning Board of Appeals by submitting a written request to the Township Clerk within ten days of the issuance of notice of such suspension.

(f) An appeal for any suspension hereunder shall automatically stay any suspension pending the outcome of the appeal, unless the Chief of Police, Fire Chief, or Building Official determines that continued operation under the license would pose an unreasonable risk to the safety, health, or welfare of a patron, an employee, or the general public, and the Township Clerk approves an immediate suspension based upon such determination. Such immediate suspensions shall only be effective for a maximum period of seventy-two hours from the time and date of suspension, and may only be extended for one additional seventy-two-hour period by the Township Clerk if the licensee fails to eliminate the hazardous condition during the first suspension period. The Board of Trustees may impose an additional suspension of unlimited duration, upon affording the

licensee a due process hearing in a manner substantially similar to the appeal process described in this chapter, if the hazardous condition continues to exist beyond the two administrative suspensions permitted by this subsection.

(g) After the determination of the appeal or if no appeal is taken, the Chief of Police shall have the authority to take possession of the license wherever it may be found and hold the same until the suspension period has passed, and to post one or more conspicuous notices on the premises that one or more licenses have been suspended.

(Ord. 376. Passed 6-16-08; Ord. 423. Passed 6-13-16.)

850.13 REVOCATION OF LICENSES.

(a) Any license issued according to this chapter may be revoked by the Township Clerk for the following reasons, in addition to or independent of the reasons set forth in Section 850.16:

(1) Upon the investigation, recommendation, and approval of the Chief of Police, or his or her representative, for any violation of this chapter by the licensee;

(2) The licensee is no longer able to satisfy the requirements to obtain a license;

(3) The license has been suspended three times in a ten year period; or

(4) There has been misrepresentation or withholding of information upon the original or renewal of the license applications.

(b) Notice of revocation may be given by delivery to the licensee, by delivery to the establishment or by depositing the same in the United States mail, postage prepaid, certified or registered mail, return receipt requested, addressed to the licensee at the address stated on the license application. If the notice is mailed, it shall be deemed delivered upon deposit of the notice in the United States mail.

(c) The revocation shall be effective ten days after written notice delivered to the licensee. The notice of revocation shall include the same information required elsewhere in this chapter for informing an applicant that a license application has been denied.

(d) Any revocation issued under this chapter may be appealed to the Zoning Board of Appeals.

(e) An appeal of any revocation shall automatically stay the revocation pending the outcome of the appeal, unless the Chief of Police, Fire Chief, or Building Official determines that continued operation under the license would pose an unreasonable risk to the safety, health, or welfare of a patron, an employee, or the general public.

(f) Following the determination of an appeal or if an appeal is not taken, the licensee shall return all copies of the license to the Township Clerk, and the Chief of Police may take possession of the license wherever it may be found.

(Ord. 376. Passed 6-16-08; Ord. 423. Passed 6-13-16.)

850.14 FILING OF ORIGINAL APPEAL.

(a) Within ten days of issuance of notification of suspension, revocation, or denial of a license according to this chapter, an applicant may request, in the form of a written application to the Township Clerk, a reconsideration hearing before the Zoning Board of Appeals. Such application may request either reconsideration of the suspension, revocation, or denial, or a variance of any of the provisions or requirements of any law, ordinance, code, or regulation the violations of which constituted grounds for the suspension, revocation, or denial, or both.

(b) The appeal must state specifically the applicant's reasons for believing the actions of the applicable Township official were erroneous, and a copy of the decision or notice complained of should be attached to the appeal.

(c) The appeal hearing shall be conducted in accordance with the provisions in the Code of Ordinances. At the hearing, the appellant and the appellant's attorney may present a statement and evidence showing:

(1) That there are exceptional or extraordinary circumstances or conditions applying to the proposed massage establishment or massage therapist/myomassologist applicant referred to in the appeal application submitted to the Township Clerk, which circumstances or conditions do not apply generally to any proposed massage establishment or massage therapist/myomassologist; and/or

(2) That the granting of such massage business license or massage therapist/myomassologist's license will not, under the circumstances of the particular case, have a material adverse effect upon the health, safety, or welfare of the persons residing or working in the neighborhood or attending any massage establishment, and will not, under the circumstances of the particular case, be materially detrimental to the public welfare or injurious to the immediate neighborhood or the Township at large.

(d) In all cases where the Zoning Board of Appeals grants a variance of any provision or requirements of this chapter, or otherwise relaxes or overturns an administrative decision to suspend, revoke, or deny, the Zoning Board of Appeals shall condition its order in any manner it deems necessary or desirable and which will be in harmony with the general purpose and intent of this chapter, and which will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

(e) In no event shall the Zoning Board of Appeals grant a variance or relax or overturn an administrative decision where the suspension, revocation, or denial is based upon the occurrence of criminal acts, fraud, dishonesty, or other acts of moral turpitude, if established at the hearing by a simple preponderance of the evidence.

(Ord. 376. Passed 6-16-08; Ord. 423. Passed 6-13-16.)

850.15 EXEMPTIONS; ADDITIONAL LICENSING REQUIREMENTS.

The licensing provisions of this chapter shall not apply to hospitals, nursing homes, medical clinics, or sanitariums that offer massage treatment for medical purposes to persons admitted for medical reasons, nor shall they apply to persons holding a valid, unrevoked certificate to practice medicine under the laws of the State, or to persons holding a valid, unrevoked license or certificate of registration issued by the State, such as members of the following professions: nursing, physical therapy, occupational therapy, cosmetology performing facial massage only,

barber performing facial massage only, licensed medical doctor or other medical, osteopathic, or chiropractic professional, or any individual working under the direct supervision of such a person when performing the duties of such professionals, or an athletic trainer administering a massage in the normal course of training duties. Nevertheless, if such persons administer massage services at a massage establishment, such establishment must still be licensed as required by this chapter. In addition to meeting the licensing requirements in this chapter, a massage therapist/myomassologist must also provide proof of professional liability insurance as required by this chapter. Massage programs/schools licensed as proprietary by State of Michigan and North Central Accreditation are also exempt.

(Ord. 376. Passed 6-16-08; Ord. 423. Passed 6-13-16.)

850.16 LICENSE NOT ASSIGNABLE OR TRANSFERABLE.

Any license issued hereunder is not subject to assignment or transfer.

(Ord. 423. Passed 6-13-16.)

850.99 PENALTY.

Violation of this chapter or any provision hereunder shall be deemed a misdemeanor subject to imprisonment in the County jail for a period of up to ninety-three days or subject to fines up to five hundred dollars (\$500.00) plus court costs and/or in addition probation and terms and conditions as authorized by law.

(Ord. 376. Passed 6-16-08; Ord. 423. Passed 6-13-16.)