

COUNCIL ACTION FORM

SUBJECT: REVISED ORDINANCE REGULATING MASSAGE ESTABLISHMENTS

BACKGROUND:

At the August 13, 2019 City Council meeting, the Council directed staff to draft an ordinance to regulate massage establishments. These regulations have been encouraged by massage practitioners and others interested in eliminating the practice of illicit massage and human trafficking in the community. A subsequent discussion was held with the City Council on November 12, where the Council directed staff to make several modifications to the draft ordinance.

The attached ordinance incorporates the instructions from the City Council. If the City Council approves the ordinance, staff will begin the process of notifying massage establishments of these new requirements.

ALTERNATIVES:

1. Approve first reading of the attached ordinance regulating the practice of massage therapy.
2. Refer the ordinance back to staff for modifications.
3. Do not approve first reading of a massage therapy regulation ordinance.

CITY MANAGER'S RECOMMENDED ACTION:

The attached ordinance includes the components City Council directed staff to incorporate. The ordinance language has been reviewed with the individuals who initially requested City regulation of massage practitioners. City staff believes this ordinance provides the desired scrutiny of massage providers, without significantly increasing the administrative burden on providers or the Police.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby approving first reading of the attached ordinance regulating the practice of massage therapy.

ORDINANCE NO.

AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF AMES, IOWA, BY ENACTING A NEW SECTION 11.9 THEREOF, FOR THE PURPOSE REGULATING MASSAGE ESTABLISHMENTS REPEALING ANY AND ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT TO THE EXTENT OF SUCH CONFLICT; PROVIDING A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ENACTED, by the City Council for the City of Ames, Iowa, that:

Section One. The Municipal Code of the City of Ames, Iowa shall be and the same is hereby amended by enacting a new Section 11.9 as follows:

“SEC. 11.9. MASSAGE THERAPY

(1) Purpose.

The State of Iowa licenses massage therapists pursuant to Iowa Code Chapter 152C. Licensed massage therapists and businesses offering massage therapy services perform an important service in addressing the health and well-being of Ames residents. The purpose of this ordinance is to help identify and address businesses that engage in the practice of massage therapy without valid licenses and/or are involved in illegal activities.

(2) Definitions.

For purposes of this Section, unless the context otherwise requires:

(a) "Massage therapist" means a person licensed under Iowa Code Chapter 152C to practice the health care service of the healing art of massage therapy in the City of Ames.

(b) "Massage therapy business" means any business or place of business, including mobile, temporary, and transient businesses, wherein, or on whose behalf, any of the treatments, techniques, or methods of treatment referred to as "massage therapy" are administered, practiced, used, given, advertised or applied.

(c) "Massage therapy" shall be as defined in Iowa Code Chapter 152C.

(d) "Placard" means a poster or sign for public display affixed to a structure to provide notice to the public that the premises are unsafe for entry.

(3) State License Required.

The practice of massage therapy, as defined in Iowa Code Chapter 152C, is prohibited by unlicensed individuals. It is unlawful for a person to engage in or offer to engage in the practice of massage therapy, or use in connection with the person's name, the initials "L.M.T." or the words "licensed massage therapist", "massage therapist", "masseur", "masseur", or any other word or title that implies or represents that the person practices massage therapy, unless the person possesses a license issued under the provisions of Iowa Code section 152C.3.

(4) Display of License and Photograph.

Each massage therapist must prominently display in an area in plain sight of customers of the massage therapy business, a copy of the massage therapist's valid massage therapy license and a color photograph of the massage therapist whose license is displayed. The color photograph shall measure no smaller than six (6) square inches (for example, a 2"x3" photograph), with the face of the massage therapist clearly recognizable and occupying the majority of the photograph.

Each massage therapist must be in possession of their license at all times while doing business in the city and must, upon request of a prospective customer or City official, exhibit the license as evidence of compliance with all requirements of this Section.

(5) Manager Designated.

An individual, who is a resident of the state of Iowa, must be designated to act as the manager for the massage therapy business. The name and position of the manager must be prominently displayed near the displayed massage therapy licenses. The manager shall consent to serve as an agent for the service of notices and other processes related to the massage therapy business. The manager shall remain responsible for the conduct of the massage therapy business until another person has been designated as manager in

writing. This manager designation requirement shall not apply to a massage therapy business that has only one massage therapist.

(6) Information Required.

Upon request by City staff, a massage business shall immediately produce documentation including the following information:

- (a) Name of the business;
- (b) Name, email address, telephone number, and residential address of the manager of the business;
- (c) Names of all licensed massage therapists (LMTs) employed or contracted by the business and their State license numbers;
- (d) Names and addresses of all other persons who work on the business premises whether employees or independent contractors of the business along with a description of the work performed;
- (e) Name(s) of the business owner(s);
- (f) Name(s) and mailing address(es) of all individuals who have an ownership interest in the business; and
- (g) Name(s) of any commercial tenant(s) leasing the business premises.

To confirm the identity of the LMT, a government issued photo identification card of the LMT and a copy of their valid and current license must be provided to City staff upon request.

(7) Hours of Operation.

No person shall be engaged in the practice of massage therapy between the hours of midnight and 5:00 a.m. unless such therapy takes place:

- (a) in a licensed medical facility;
- (b) in a licensed hospice facility;
- (c) under the specific direction or supervision of a person described in Iowa Code section 152C.9(1); or
- (d) with written approval from the Chief of Police or designee.

(8) Special provisions.

(a) Upon a determination by the police department that a massage therapy business has employed or otherwise contracts with an unlicensed massage therapist, or is otherwise in violation of this section, the Chief of Police, or designee, is empowered to place placards in one or more highly noticeable locations at the massage therapy business facility. The placard(s) shall state: "Unsafe to Enter; Unlicensed Massage Therapy Must Cease and may be subject to criminal and/or civil penalty pursuant to Ames Municipal Code section 11.9." The placard(s) must remain posted until a valid state license is obtained or other legal use has been established and demonstrated to the police department. This action may be appealed pursuant to Ames Municipal Code section 11.9(10).

(b) If the City has probable cause that prostitution, as defined by Iowa Code Chapter 725, or Human Trafficking, as defined by Iowa Code Chapter 710, has occurred at a property providing Massage Therapy, the police department may placard the property. This action may be appealed pursuant to Ames Municipal Code section 11.9(10).

(c) No person shall remove the placard posted pursuant to subsection (a) or subsection (b) of this section without approval of the Chief of Police or designee.

(d) No person, whether individually or in connection with one or more persons or as principal, agent, or accessory, shall continue to offer "massage therapy" services at the placarded location after a massage therapy business has been placarded as unsafe for entry unless the Chief of Police or designee has approved removal of the placard.

(9) Penalties.

A violation under this Section is declared to be a municipal infraction punishable by a civil penalty of \$500 for a person's first violation and by a civil penalty of \$750 for each repeat violation. Alternatively, violation of this Section may be charged by a peace officer of the City as a simple misdemeanor.

(10) Appeal of placard.

Should a person or business be placarded pursuant to subsection (8) above, the person or business may appeal the placarding by filing a written notice of appeal to the City Manager within seven days of the date of the placarding. The written appeal shall state the grounds of the appeal.

(a) Upon receiving a notice of appeal, a hearing shall be convened, chaired by the City Manager or designee, to receive any testimony or other evidence that is deemed appropriate concerning the placarding.

(b) When an appeal has been filed, the Police Department shall make a reasonable effort to notify any persons who would have had direct involvement in the situation which led to the placarding.

(c) The appeal shall be heard by a committee appointed by the City Manager and consisting of a minimum of three people, including a member of the public, a licensed massage therapist, and the Director of Planning and Housing or their designee.

(d) Following such hearing, the Committee may:

(i) uphold the placarding; or

(ii) Modify or reverse the placarding, after which the

(iii) Chief of Police shall take such action as is necessary to carry out the decision of the Committee.

(e) The decision of the Committee and the reasons for it shall be summarized in writing and provided to the person who filed the appeal.”

Section Two. Violation of the provisions of this ordinance shall constitute a municipal infraction punishable as set out by law.

Section Three. All ordinances, or parts of ordinances, in conflict herewith are hereby repealed to the extent of such conflict, if any.

Section Four. This ordinance shall be in full force and effect from and after its passage and publication as required by law.

Passed this _____ day of _____, _____.

Diane R. Voss, City Clerk

John A. Haila, Mayor