

AKS
10/14/22

ORDINANCE 2022- 14

AN ORDINANCE CREATING ARTICLE 10-12 OF THE ORDINANCES OF THE CITY OF ROCK SPRINGS ENTITLED, "LICENSING AND REGULATION OF MASSAGE THERAPISTS AND MASSAGE ESTABLISHMENTS."

WHEREAS, the Governing Body of the City of Rock Springs recognizes the physical and psychological benefits that can be derived from massage therapy, and the vital service that legitimate and professional Massage Therapists provide to the community; and,

WHEREAS, the City of Rock Springs also recognizes that certain establishments and individuals within the City have used and are using massage establishments and massage therapy as a front for illegal prostitution and human sex trafficking; and,

WHEREAS, pursuant to the authority granted to it by Wyoming Statute §15-1-103(a)(xvi), City of Rock Springs the power to suppress or prohibit houses of prostitution, punish the keepers thereof, and persons resorting thereto, and to suppress any other disorderly and vicious conduct; and,

WHEREAS, pursuant to the authority granted to it by W.S. §15-2-103(xli) the City of Rock Springs has the power to adopt ordinances, resolutions and regulations necessary for the health, safety and welfare of the City, and to prescribe a criminal punishment therefor; and,

WHEREAS, pursuant to the authority granted to it by W.S. §15-1-103(xviii) the City of Rock Springs has the power to regulate, prevent or suppress any conduct which disturbs or jeopardizes the public health, safety, peace or morality, in any public or private place; and,

WHEREAS, the City of Rock Springs finds that the practices of prostitution and human sex trafficking are illegal, disorderly, vicious, and injurious to the public health and welfare and that it is necessary for the City to regulate Massage Therapists and Massage Establishments for these reasons.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ROCK SPRINGS, STATE OF WYOMING:

Section 1. That Article 10-12 of the Rock Springs City Ordinances entitled "LICENSING AND REGULATION OF MASSAGE THERAPISTS AND MASSAGE ESTABLISHMENTS" be and it is hereby created to read as follows:

10-1201 Purpose

It is the purpose and intent of the City of Rock Springs that all persons, entities, and establishments which provide Massage Therapy services within the City limits shall be licensed by the City.

10-1202 Definitions

For purposes of this Article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Adequate" is to be determined by the Enforcement Officer according to the provisions of this Article.

"Enforcement Officer" means the Chief of Police or his/her designated representative, whose duty it is to inspect all businesses covered by this Article.

"License" means the license to engage in the activities of a Massage Establishment required by this Article; the license fee is \$100.00 except for a sole proprietorship. A sole proprietorship shall not be assessed a separate fee for the business but shall receive a license if the sole proprietorship is the holder of a Massage Therapist license.

"Massage Establishment" means any establishment having a fixed place of business wherein any person, firm, association or corporation engages in or carries on or licenses to engage in or carry on any of the activities mentioned in this Article. Any establishment engaged in or carrying on or licensing any type of massage for any payment or consideration shall be deemed a Massage Establishment.

"Massage Therapist" means any person who conducts Massage Therapy as defined below, for consideration or remuneration.

"Massage Therapy" "massage" and "bodywork" mean, for the purposes of this ordinance, the application of a system of structured touch, pressure, movement and holding of the soft tissues of the human body. The application may include pressure friction stroking, rocking, kneading, percussion, or passive or active stretching within the normal anatomical range of movement. Complementary methods, including the external application of water, heat, cold, lubricants and other topical preparations; or the use of mechanical devise that mimic or enhance actions may be done by the Massage Therapist.

"License" means the license needed to engage in the activities of a massage and/or body work therapist required by this ordinance; the license fee is sixty dollars.

"Person" means any proprietorship, individual, partnership, firm, association, joint stock company, corporation, or combination of individuals of whatever form or character.

"Public" means four or more people not related to the operator of a Massage Establishment.

10-1203 **Massage Establishment and Massage Therapist Licenses**

- A. Every Massage Establishment shall apply to the City for a license pursuant to the provisions of this Article before beginning business. If, after a visual inspection to ensure that the premises are clean and being used for their intended purpose, and after payment of the appropriate fee, the Enforcement Officer shall approve the application.
- B. No person shall practice as a massage and/or bodywork therapist, proprietor, employee or otherwise, unless he/she has a valid and subsisting Massage Therapist License issued by the City Clerk's Office, pursuant to the provisions of this Article. An application for a license shall be submitted to the Clerk of the City of Rock Springs who will forward the

application to the Rock Springs Police Department for the purpose of conducting background checks and fingerprinting.

- C. No License provided for hereunder is transferrable.
- D. No person granted a license pursuant to this Article shall operate the Massage Establishment under a name not specified in his/her license, nor shall he/she conduct business under any designation or location not specified in his/her license. Off premises massage service can be included in approved establishment's or licensee's license.

10-1204 License—Term

The licenses so issued shall be valid for a period of One (1) year from the date on which they are issued, unless suspended or revoked, and must be renewed ten days prior to expiration.

10-1205 License—Display

Licenses required by this Article shall be displayed to public view on the licensed premises or provided to the Enforcement Officer upon demand.

10-1206 Massage Establishment Operating Requirements

- A. No person or business entity shall engage in, conduct or carry on, or license to engage in, conduct or carry on, the operation of a Massage Establishment unless each person employed or acting as a massage and/or bodywork therapist shall have a valid license issued pursuant to the provisions of this Article, and it shall be a violation of this Article for any owner, operator, responsible managing employee, manager, or licensee in charge of or in control of a Massage Establishment to employ or allow a person to act as a massage and/or bodywork therapist who is not in possession of a valid license.
- B. Each person or business entity engaging in, conducting or carrying on Massage Therapy or the operation of a Massage Establishment shall keep an accurate and timely written record of each customer served, including the customer's name, address, and telephone number.
- C. The Massage Establishment has a continuing requirement to submit to visual inspection of the premises, customer records, licenses, any employee, manager, or Massage Therapist Licensee of the Massage Establishment upon request from the Enforcement Officer as a condition of the Massage Establishment License. Failure or refusal to comply with this section may result in an Order to Comply issued pursuant to 10-1207, a citation written pursuant to this section for failure to comply with a lawfully required inspection, and/or immediate license revocation.

10-1207 Order to Comply

The Enforcement Officer shall issue to the affected person or licensee a provisional order to comply with this Article, apprising such person or licensee of the specific violations and setting forth herein the time allowed for compliance. Upon failure or refusal to comply with the provisional order, the Enforcement Officer shall make such order final and suspend or revoke the licensee's license and/or issue a citation pursuant to 10-1216.

10-1208 Application for Massage Establishment License

A. Any person or business entity desiring to engage in the business, trade, profession, operation or conduct of a Massage Establishment or provide Massage Therapy as provided in this Article shall, before engaging in such business, file an application with the City Clerk and pay an application fee of \$100.00. The application, once accepted, shall be referred to the Rock Springs Police Department for investigation of the applicant's background including the submission of fingerprints. The following information shall be required:

1. The full and true name(s) and any other name(s) used by each applicant (hereinafter all provisions which refer to the applicant include any applicant which may be a corporation or partnership, LLC, etc.);
2. The present address and telephone number and a valid driver's license, state-issued identification card, or social security number of each applicant. If the applicant is a corporation, partnership, limited partnership, LLC, etc., hereafter business entity, the names and residence addresses of each of the officers and directors of said business entity owning more than ten percent of the business entity, and the address of the business entity, if different from the address of the Massage Establishment;
3. The location, mailing address, and all telephone numbers where the Massage Establishment is to be conducted;
4. The prior addresses for three years immediately prior to the date the application for a business license and/or license of the applicant is submitted to the City Clerk's office;
5. Date of Birth and Proof that the applicant is over the age of majority;
6. The massage or similar business history of each applicant; whether such person, in previously operating in this or another city, county or state, has had a business license or license revoked or suspended, the reason therefore, and the business activity or occupation subsequent to such action of suspension or revocation;
7. The name and address of each Massage Therapist who is or will be employed in such establishment; written authorization for the Rock Springs Police Department, its agents and employees to seek information and conduct a national background investigation with fingerprinting, and an investigation into the truth of the statements set forth in the application. The applicant shall be fingerprinted at the Rock Springs Police Department; and,
8. The applicant shall notify the Clerk's office, who in turn will notify the Rock Springs Police Department, of any change in any of the data required to be furnished by this section within seven business days after such change occurs.

Upon completion of the application and the furnishings of all the foregoing information, the City of Rock Springs Clerk's Office shall accept the application for processing and forward the application to the Rock Springs Police Department to begin the background check process.

10-1209 Application for Massage Therapist license.

A. The application, and application fee of \$100.00 to apply for a Massage Therapist License shall be made to the City Clerk's office with the same requirements, and in the manner as for a Massage Establishment license. In addition, the application shall contain the following:

1. Proof of not less than three hundred thousand dollars (\$300,000.00) in general liability insurance coverage with coverage for the period of the license;

2. Proof that the applicant has passed the MBLEx Examination administered by the Federation of State Massage Therapy Boards, or has completed a massage-therapy affiliated curriculum at a school that meets the following requirements:
 - a. The school's massage therapy affiliated curriculum must be reviewed, evaluated and approved by a national or international professional massage therapy organization; or,
 - b. The school must have current accreditation status issued by an accreditation organization recognized by the U.S. Department of Education, the Wyoming Department of Education, or have current accreditation status issued by a national accreditation organization.

10-1210 Issuance of license for a Massage Establishment or license for a Massage Therapist.

- A. Upon completion of the application review, the City Clerk may issue a license for a Massage Establishment and/or a license for a massage and/or bodywork therapist to any person if all requirements for a Massage Establishment license or Massage Therapist license as described in this Article are met unless the City Clerk's office finds:
 1. The operation, as proposed by the applicant, if licensed, would not comply with this Article or any other provision of applicable City Ordinances;
 2. The applicant fails or refuses to comply with the requirements of this Article;
 3. The applicant, if an individual or if a business entity owner owning ten percent or more of the entity and the officers, members, partners and directors of the entity, or the holder of any lien, of any nature, upon the business and/or the equipment used therein, or 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, that would have constituted any of the following offenses if committed within the last ten years within the state of Wyoming:
 - a. An offense involving the use of force and violence upon the person of another that amounts to a felony or would qualify as domestic violence; or,
 - b. An offense involving sexual misconduct or prostitution; or,
 - c. An offense involving narcotics, dangerous drugs or dangerous weapons that amounts to a felony; or,
 - d. An offense involving or relating to human trafficking.
 4. The applicant, if an individual, or business entity owner owning ten percent or more of the entity, and the officers, members, partners, and directors of the entity, or the holder of any lien, of any nature upon the business and/or the manager or other person principally in charge of the business has after reaching the age of majority been convicted, including pleas of guilty or nolo contendere, or any offense in Wyoming or any other jurisdiction containing the same elements, or arising out of the same or similar facts or circumstances which requires registry as a sex offender; or,
 5. The applicant has knowingly made any false, misleading or fraudulent statement of fact in the license or license application or in any document required by the applicant; or,

6. The applicant, if an individual, or any of the officers, directors, members or owners owning ten percent or more of the business entity, or manager or other person principally in charge of the operation of the business, is not over the age of eighteen years old.

10-1211 Approval or denial of application.

The City Clerk's Office shall act to approve or deny an application for licenses and licenses under this Article within ten business days, after the receipt of a recommendation letter from the Enforcement Officer or his or her designee, based on the applicant's ability to meet and maintain the requirements regarding the applicant's criminal background and history as required in this Article.

10-1212 Traveling Massage Therapists; exceptions.

- A. The practice of massage therapy by a person who is a resident of another state and is licensed by the state or local government of such residency or who can legally practice massage therapy in such state, or a person who is a Wyoming resident practicing massage therapy but is not a resident of the City of Rock Springs, who is in Rock Springs temporarily may practice massage therapy no more than ten days in any one calendar year, under one of the following circumstances:
 1. The person is traveling with and administering massage therapy to members of a professional, collegiate, or amateur sports organization, or dance troupe, music, theatrical or other performing arts group, or other athletic organization;
 2. The person provides massage therapy at a public athletic event such as the Olympic Games, Special Olympics, youth Olympics, or marathons if the massage therapy is provided no earlier than forty-eight hours prior to the commencement of the event and no later than twenty-four hours after the conclusion of the event;
 3. The person is part of an emergency response team or is otherwise working with or for disaster relief officials to provide massage therapy in connection with a disaster situation; or
 4. The person is participating as a student in or instructor of an educational program which meets the requirements of "school" as defined under this Article.

10-1213 Appeal of denial, suspension or revocation of license.

- A. Within three business days of the denial of an application for a Massage Establishment license, or a Massage Therapist license, the applicant may file with the City Clerk's office a written request for an appeal hearing. At such hearing, to be held at a reasonable time after receipt of request, evidence shall be received for the purpose of determining whether or not such denial shall be upheld. During the hearing, all requirements of the Wyoming Administrative Procedures Act shall be followed and an independent hearing officer, a member of the Wyoming State Bar, shall be retained to conduct such hearing and render a decision on the issue(s). Any individual who has practiced massage therapy, or has owned a Massage Establishment in Rock Springs, Wyoming, for at least twelve months preceding the denial of their application for license or license, may continue to practice massage therapy and/or operate their Massage Establishment throughout the appeal process.
- B. The notification of the reasons for such decisions shall be set forth in writing and sent to the applicant by means of registered or certified mail or hand delivery.

- C. Any Massage Establishment license or Massage Therapist license shall be subject to a non-arbitrary suspension or revocation by the City Clerk's office for a violation in the issuance of such license in the first instance, or for the violation of any law regulating Massage Establishments or Massage Therapists. A suspension of five days or more or a revocation may be appealed pursuant to the procedure referred in the preceding two paragraphs.
- D. Any individual who has practiced massage therapy or bodywork, may upon paying a fee of sixty dollars, be granted a Massage Therapist license to practice in this city without being required to take an examination, if the applicant provides evidence satisfactory to the Clerk as follows:
 - 1. Actively practiced in Rock Springs, Wyoming for at least two of the last three years prior to the effective date of this ordinance [from which this section derives]; and,
 - 3. Is not subject to suspension, revocation, or otherwise restricted in any manner for disciplinary purposes; and,
 - 4. Qualifies for licensure or license under this section pursuant to the background check and fingerprinting provisions; and,
 - 5. Denial of an application or suspension, or revocation of a license issued pursuant to the grandfather provision shall follow the same appeal process as set out subsections A. through C above.

10-1214 Exemptions for professional practices.

The following persons practicing massage therapy or bodywork while providing one of the professional services as set out in this section are exempt from the provisions of this Article concerning massage therapy:

- A. Physicians, physician's assistants, surgeons, chiropractors, osteopaths, occupational therapists, or physical therapists who are licensed to practice their respective profession in the state of Wyoming.
- B. Registered nurses, licensed practical nurses, and certified nursing assistants performing massage services in the course of their usual nursing duties.
- C. Barbers or beauticians licensed under the laws of this state, except that this exemption shall apply solely to the massaging of the neck, face, scalp and hair of the customer or client for cosmetic beautifying purposes.
- D. Cosmetologists and nail technicians who are licensed under the laws of this state, except that this exemption shall solely apply to the massaging of the customer or client's lower leg, starting at the section of the leg at and below the customer or client's kneecap and including their ankles, and feet; and the customer or clients' arms, starting at the customer or client's shoulder to their fingertips.
- E. Hospitals, clinics, nursing and convalescent homes, and other similarly licensed health care facilities.

10-1215 Renewal procedures.

- A. Any Massage Establishment license or Massage Therapist license issued under the provisions of this Article shall be valid for two years from the date of issuance.

- B. Any person holding a valid Massage Establishment license or a valid therapist license who wishes to renew the same shall submit to the City Clerk's office no less than sixty days, but no more than ninety days prior to the renewal date the same information and documentation as required for the initial issuance as previously set forth herein.
- C. The City Clerk's office shall act to approve or deny an application for renewal of a license under this Article within a reasonable period of time and in no event shall the City Clerk's office act to approve or deny said license later than thirty days from the date and said renewal application was accepted and found to be complete by the City Clerk's office.

10-1215 Severability and effective date.

A. If any section, subsection, sentence, clause, phrase, or portion of this Article is for any reason held invalid or unconstitutional by any court or competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

B. This Article shall take effect immediately after it has been published as required by law.

10-1216 Required Clothing.

A licensed massage therapist's body, while conducting massage therapy or bodywork, must be covered with opaque clothing between four inches below the collarbone and 4 inches above the knees.

10-1217 Violation penalty.

Any person or business entity violating any of the provisions of this Article shall be deemed guilty of a misdemeanor and may be punishable by a fine up to seven hundred and fifty dollars (\$750.00), six (6) months incarceration or both. Ongoing violations shall be deemed separate occurrences and may result in additional charges. A separate offense is committed for each day that a violation occurs or continues.

PASSED AND APPROVED this _____ day of _____, 2022.

President of the Council

Mayor

Attest:

City Clerk

1st Reading _____

2nd Reading _____

3rd Reading _____