

Chapter 897 - MASSAGE ESTABLISHMENTS AND PRACTITIONERS

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Sec. 897. - Licensing and Regulation of Massage Establishments and Massage Practitioners.

(Ordained by Ord. No. 232-1996, eff. Sept. 6, 1996)

Sec. 897-1. - Definitions.

The following words and phrases, wherever used in this chapter, shall be construed as defined in this section unless from the context a different meaning is intended.

(Ordained by Ord. No. 232-1996, eff. Sept. 6, 1996)

Sec. 897-1-A. - Applicant.

"Applicant" shall mean a person who applies for a massage practitioner license or a massage establishment license. If the applicant for a massage establishment is other than an individual, each individual who has a 20% or greater interest in the business and the person who will manage the business conducted in this city shall be deemed to be an applicant and upon issuance of a massage establishment license, a licensee.

(Ordained by Ord. No. 232-1996, eff. Sept. 6, 1996)

Sec. 897-1-M-1. - Massage Establishment.

"Massage Establishment" shall mean any place of business or establishment wherein any of the

subjects or methods of treatment listed in section 897-1-M-3 are administered, practiced or used, or from which is dispatched a person for the purpose of administering, practicing or using any of the subjects or methods of treatment listed therein.

(Ordained by Ord. No. 232-1996, eff. Sept. 6, 1996)

Sec. 897-1-M-2. - Massage Practitioner.

"Massage Practitioner" shall mean a person who practices or administers any massage or touching techniques listed in section 897-1-M-3 for a fee, income or compensation of any kind within the city of Cincinnati.

(Ordained by Ord. No. 232-1996, eff. Sept. 6, 1996)

Sec. 897-1-M-3. - Massage or Touching Techniques.

"Massage" or "Touching Techniques" shall mean any of the following named subjects and methods of treatment: oil rubs; alcohol rubs; salt glows; hot or cold packs; tub, shower, or cabinet baths; colon irrigation; and touching procedures upon the external parts of the body by hand or by any electrical, mechanical or vibratory apparatus—including stroking, friction, kneading, rolling, vibrating, cupping, petrissage, rubbing, effleurage and tapotement.

(Ordained by Ord. No. 232-1996, eff. Sept. 6, 1996)

Sec. 897-1-M-4. - Moral Turpitude.

"Moral Turpitude" shall mean an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to society in general.

(Ordained by Ord. No. 232-1996, eff. Sept. 6, 1996)

Sec. 897-3. - City Treasurer; Duties.

It shall be the duty and responsibility of the city treasurer for the city of Cincinnati or such persons as may be designated by the city treasurer to administer the provisions of chapter 897. Pursuant to this duty the city treasurer or such designee shall issue, renew, deny, suspend or revoke massage practitioner and massage establishment licenses as required by chapter 897.

(Ordained by Ord. No. 232-1996, eff. Sept. 6, 1996)

Sec. 897-5. - Licensing of Massage Practitioners and Massage Establishments Required.

(a) It shall be unlawful for any person to practice or administer or to offer or agree to practice or administer any subject or method of treatment listed in section 897-1-M-3 in the city of Cincinnati, whether for a fee, income or consideration of any kind, without first obtaining and maintaining in effect a massage practitioner license as required by chapter 897

(b) It shall be unlawful for any person, association, firm, or corporation to conduct or operate a massage establishment or to perform such services in the city of Cincinnati without first obtaining and maintaining in effect a massage establishment license as required by chapter 897

(c) It shall be unlawful for any person, association, firm, or corporation to employ as a massage practitioner in the city of Cincinnati any person who does not hold a current unrevoked and

unsuspended massage practitioner license as required by chapter 897

(d) It shall be unlawful for any person, association, firm, or corporation licensed as provided in chapter 897 to operate under any name or conduct business in the city of Cincinnati under any designation not specified in such license.

(e) It shall be unlawful for any massage establishment licensed as provided in this article to remain open for business or provide services any time between the hours of 1:00 a.m. and 6:00 a.m.

(Ordained by Ord. No. 232-1996, eff. Sept. 6, 1996)

Sec. 897-7. - New License Application; Procedures and Fee.

(a) Any person, association, firm, or corporation desiring to obtain a massage practitioner or massage establishment license shall make application to the city treasurer who shall refer each such application to the chief of police for appropriate investigation. A person desiring licenses authorizing him to perform the activities of a massage practitioner and, in addition, to conduct or operate a massage establishment shall submit two separate applications.

(b) The application shall be accompanied by a non-refundable fee in the amount of \$300.00 for an initial license to operate a massage establishment, and \$150 for a renewal license; or \$200.00 for an initial license to operate as a massage practitioner, and \$50 for a renewal license, as those terms are defined in this chapter.

(c) An applicant for a massage practitioner or massage establishment license shall submit the following:

- (1) The full legal name and current residence address of the applicant;
- (2) Any other names by which the applicant has been known;
- (3) The address at which applicant desires to do business;
- (4) The two residence addresses immediately prior to the present residence address of applicant, and the dates of residence at each;
- (5) Written proof that the applicant is over the age of twenty-one years if applying for a massage establishment license, or over the age of eighteen years if applying for a massage practitioner license;
- (6) Two portrait photographs, approximately two inches by two inches in size, taken within the previous six months;
- (7) The business license history of the applicant, whether the applicant, in previously operating in this or another city or state under license, has had such licenses revoked or suspended, the reason therefor, and the business activity or occupation subsequent to such suspension or revocation;
- (8) All felony and misdemeanor convictions, excluding those for traffic offenses, and the grounds of such convictions;
- (9) The applicant's complete fingerprints, recorded by the police department;

(10) The applicant's education, training and experience in the administration, practice or use of the subjects and methods listed in section 897-1-M-3, including diplomas or credentials from schools or institutions of learning. The educational requirements for massage practitioner license applicants shall include certification of satisfactory completion of a minimum of 160 hours of course instructions in anatomy, physiology and massage or touching techniques from a school of massage approved by the State Medical Board of Ohio or an equivalent board from outside this state, or accredited by an accrediting agency recognized by the United States Department of Education or the Council on Post Secondary Accreditation.

(11) Any other identification and information as the police department may require in order to discover the truth of the matters above required to be set forth in the application.

(Ordained by Ord. No. 232-1996, eff. Sept. 6, 1996; Emer. Ord. 463-2010, § 53, eff. Dec. 30, 2010)

Sec. 897-9. - License Application Investigation.

Any applicant for a license pursuant to these provisions shall personally appear at the office of the city treasurer and shall present the application containing the information required by section 897-7. The police department shall have a reasonable time in which to investigate the application and the background of the applicant. Based on such investigation, the police department shall recommend to the city treasurer approval or denial of the license.

(Ordained by Ord. No. 232-1996, eff. Sept. 6, 1996)

Sec. 897-11. - Massage Establishment License; Special Requirements.

(a) No massage establishment license shall be issued if the applicant has been convicted within the last ten years of any felony, or any misdemeanor offense involving moral turpitude and having a reasonable relationship to the functions of a massage establishment licensee, or if the application was deliberately falsified.

(b) No massage establishment license shall be issued if the applicant has been convicted within the last ten years of any offense committed outside this state or city which if committed in this state or city would constitute a felony, or any misdemeanor offense involving moral turpitude and having a reasonable relationship to the functions of a massage establishment licensee.

(c) An applicant for a massage establishment license or a licensee shall permit representatives of the police department, and any other federal, state, county, or city agency in the performance of any function connected with the enforcement of any code, statute or regulation relating to human health, safety or welfare or structural safety, normally and regularly conducted by such agencies, to inspect the premises of a massage establishment for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

(d) No massage establishment license shall be issued unless inspection by a city agency or, where appropriate, a county agency, indicates the site of the establishment complies with each of the following minimum requirements:

(1) A current certificate of occupancy shall be issued in the name of the massage establishment.

(2) A readable sign shall be posted at the main entrance identifying the establishment as a massage establishment.

(3) Minimum lighting shall be provided in accordance with the building code of the city of Cincinnati and in addition, at least one artificial light of not less than forty watts shall be provided in each room or enclosure where services are performed on patrons which shall be in operation when such services are performed.

(4) Minimum ventilation shall be provided in accordance with the building code of the city of Cincinnati.

(5) Adequate equipment shall be provided for disinfecting and sterilizing instruments used in administering or practicing any of the subjects or methods of treatment listed in section 897-1-M-3.

(6) Hot and cold running water, tempered by means of a mixing valve faucet, shall be provided at all times.

(7) Closed cabinets shall be provided, and used, for the storage of clean linens.

(8) Adequate dressing and toilet facilities shall be provided for patrons. One dressing room, which may be the same as the massage treatment room. One toilet and one wash basin shall be provided by every massage establishment for every three treatment rooms. A minimum of one shower or tub shall be provided for any establishment offering colon therapy, colonics, or any hydrotherapy services, including whirlpool baths, saunas, steam baths, and herbal wraps. Each dressing room or treatment room shall contain a locker for each patron to be served, which locker shall be capable of being locked.

(9) Any pool or spa shall be issued a permit and inspected.

(10) All walls, ceilings, floors, showers, bathtubs, steam rooms, and all other physical facilities within the establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms or cabinets, toilets and wash basins shall be thoroughly cleaned each day business is in operation. Shower compartments and bathtubs, where provided, shall be thoroughly cleaned after each use.

(11) Clean and sanitary sheets and towels shall be provided for each patron of the establishment. The head rest of each table shall be provided with a clean and sanitary covering for each patron.

(12) All wash basins within an establishment shall have hot and cold running water, tempered by means of a mixing valve faucet; provide sanitary towels placed in permanent installed dispensers or upon a permanently attached rod dispenser, and provide soap in a soap dispenser that is placed on or near the wash basin. A hand wash basin shall be provided in each treatment room providing colon therapy, colonics, or hydrotherapy services, including whirlpool bath saunas, steam baths and herbal wraps.

(Ordained by Ord. No. 232-1996, eff. Sept. 6, 1996)

Sec. 897-13. - Display of License.

Every person, association, firm or corporation to whom a license shall have been granted shall display the license in a conspicuous place upon the business premises. If the license has been granted to a person, a recent photograph of the licensee shall be attached to the license.

(Ordained by Ord. No. 232-1996, eff. Sept. 6, 1996)

Sec. 897-15. - Change of Location.

A change of location of a massage establishment may be approved by the city treasurer or such person as may be designated by the city treasurer, provided that all ordinances and regulations of the city are followed and a fee of \$100.00 is paid to the city treasurer.

(Ordained by Ord. No. 232-1996, eff. Sept. 6, 1996)

Sec. 897-17. - Renewal.

(a) Annually on or before the first day of January of each year, every licensed massage establishment shall pay to the city treasurer a renewal fee of \$25.00.

(b) Annually, on or before the first day of January of each year, every licensed massage practitioner shall pay the city treasurer a renewal fee of \$15.00.

(c) The holder of an expired massage practitioner license may, within thirty days from the date of expiration, have the license renewed upon payment of the required renewal fee.

(Ordained by Ord. No. 232-1996, eff. Sept. 6, 1996)

Sec. 897-19. - Sale, Transfer or Expansion.

Upon the sale or transfer of any interest in a massage establishment, the license therefor shall be null and void. A new application shall be made by any person, association, firm or corporation desiring to own or operate the establishment. The provisions of sections 897-9 and 897-11 shall apply to any person, association, firm or corporation applying for a massage establishment permit for premises previously used as such establishment.

(Ordained by Ord. No. 232-1996, eff. Sept. 6, 1996)

Sec. 897-21. - Other Unlawful Activities; General Penalty.

(a) It shall be unlawful:

(1) For any person, association, firm, or a corporation to conduct or operate a massage establishment on the same premises whereon is also conducted the business of a liquor establishment, photography studio, model studio, art studio, telephone answering service, motion picture theater or bookstore;

(2) For any person to practice or administer any subject or method of treatment listed in section 897-1-M-3, whether for fee, gratuity or compensation of any kind;

(i) In a manner or under circumstances intended to arouse, appeal to or gratify sexual desires; or

(ii) To any other person whose private parts are not covered by opaque material; or

(iii) In any way touch the genitals of the individual receiving the treatment.

(b) Whenever in this chapter 897 any act is prohibited or declared to be unlawful, and wherever in this chapter 897 the doing of any act is required or the failure to do any act(s) declared to be unlawful, the violation of any such provision of this chapter 897 is a misdemeanor of the first degree. Each day any

such violation continues shall constitute a separate offense. Revocation or suspension of a license shall not be a defense against prosecution.

(Ordained by Ord. No. 232-1996, eff. Sept. 6, 1996)

Sec. 897-23. - Revocation, Suspension or Denial of License, Appeal; Grounds.

(a) The license of a massage practitioner or of a massage establishment may be revoked, suspended or denied renewal upon any one or more of the following grounds:

(1) That the licensee is guilty of fraud in conducting the business of massage practitioner or massage establishment or of fraud or deceit in obtaining a license to conduct such business;

(2) That the licensee has been convicted within the last 10 years in a court of competent jurisdiction of a felony, or any misdemeanor offense involving moral turpitude and having a reasonable relationship to the functions of a massage establishment licensee or a massage practitioner, whichever is applicable.

(3) That the licensee is guilty of untrue, fraudulent, misleading or deceptive advertising.

(4) That the licensee is engaged in the business of massage practitioner or massage establishment under a false or assumed name, or is impersonating another practitioner of a like or different name;

(5) That the licensee has violated any of the provisions of section 897

(b) Notwithstanding the provisions of subsection (a) of this section, the license of a massage practitioner or a massage establishment shall be revoked or denied renewal if the licensee has been convicted of any offense committed outside this state or city which if committed in this state or city would constitute a felony, or any misdemeanor involving moral turpitude and having a reasonable relationship to the functions of a massage practitioner or a massage establishment licensee.

(c) Notwithstanding the provisions of subsection (a) of this section, the license of a massage establishment shall be revoked or denied renewal if within a 12 month period, a licensee or agent, employee or independent contractor of the massage establishment while on the premises of such establishment commits any felony offense, or any misdemeanor offense involving moral turpitude and having a reasonable relationship to the functions of a massage practitioner or a massage establishment licensee.

(d) If the city treasurer determines that probable grounds exist for denial, suspension, or revocation of a license under this division, the treasurer shall notify the applicant or licensee (respondent) in writing of the intent to deny, suspend or revoke the license, including the grounds therefor, by delivery, or by certified mail. The notification shall be directed to the most current business address on file with the city treasurer. Within ten working days of receipt of such notice, the respondent may provide to the city treasurer in writing a response which shall include a statement of reasons why the license or permit should not be denied, suspended, or revoked. If a response is not received by the city treasurer in the time stated or, if after review the city treasurer finds that grounds exist for denial, suspension, or revocation, then such action shall become final and notice of such final action sent to the applicant or licensee. If the city treasurer finds that no grounds exist for denial, suspension, or revocation of a license then the city treasurer shall withdraw the intent to deny, suspend, or revoke the license and shall so notify the respondent in writing by delivery, or by certified mail of such action.

(e) When a decision to deny, suspend or revoke a license becomes final, the applicant or licensee whose application for a license has been denied or whose license has been suspended or revoked shall have the right to appeal such action within 14 working days to the city manager who shall have the authority to sustain, amend, or reverse the decision of the city treasurer.

(Ordained by Ord. No. 232-1996, eff. Sept. 6, 1996)

Sec. 897-25. - Denial or Termination of License; Appeal.

(a) The denial, revocation or non-renewal of a massage practitioner license or a massage establishment license shall continue for one year and, the applicant or licensee shall not be issued a massage practitioner license or massage establishment license for one year from the date denial, revocation or non-renewal becomes effective; provided, however, that if the license was denied or revoked under section 897-23(c), an applicant shall not be granted another license at any time, and if the license was denied or revoked under sections 897-11(a) or (b), or 897-13, or 897-23(a)(2) or (b), an applicant shall not be granted another license until ten years have elapsed from the date of conviction.

(b) The suspension of a massage practitioner license or a massage establishment license shall continue for a specified period not to exceed one year.

(c) The fact that a conviction is being appealed or a judgment of guilt is subsequently set aside shall have no effect on the denial, suspension, revocation or non-renewal of a license under this article.

(Ordained by Ord. No. 232-1996, eff. Sept. 6, 1996)

Sec. 897-27. - Applicability of Regulations to Existing Business.

The provisions of chapter 897 shall apply to all activities regulated by this chapter of such persons and businesses described herein, whether such activities were commenced before, on or after the effective date of this ordinance; provided however, that any person licensed as a massage practitioner prior to the effective date of this ordinance, by this city or any other licensing authority and having certification of satisfactory completion of course instruction in anatomy, physiology, or massage and touching techniques from a school or institution approved by the state medical board of Ohio or an equivalent board from outside this state, or accredited by an accrediting agency recognized by the United States department of education or the council on post secondary accreditation shall be eligible for a license under this article, provided they file an application within two years of the effective date of this ordinance and is otherwise qualified and complies with all other provisions set forth herein.

(Ordained by Ord. No. 232-1996, eff. Sept. 6, 1996)

Sec. 897-29. - Exemptions.

(a) The provisions of this article shall not apply to:

- (1) Persons authorized by the laws of this state to practice medicine, osteopathy, chiropractic, podiatry, or naturopathy;
- (2) Registered nurses, licensed practical nurses or technicians, when acting under the supervision of a licensed physician or osteopath;
- (3) Persons employed or acting as trainees for any bona fide amateur, semiprofessional or professional athlete or athletic team;

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(4) Persons authorized by the laws of this state as barbers or cosmetologists, provided their activity is limited to the head, face, or neck;

(5) Persons wholly employed in the sale of clothing, cosmetics, jewelry or sporting equipment insofar as these individuals must incidentally touch a customer to properly fit or sell the product, at its standard market price.

(6) Persons wholly engaged in specialized weight reduction techniques where touching of the body is incidental to the procedure.

(b) Any exemption granted herein is effective only insofar as and to the extent that the bona fide practice of the business or profession of the person exempted overlaps into the field comprehended by chapter 897, and exemptions granted herein are solely for those activities which are performed in the course of the bona fide practice of the business or profession of the person exempted.

(Ordained by Ord. No. 232-1996, eff. Sept. 6, 1996)