CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

ITEM: **DATE: December 11, 2017**

First reading of proposed Ordinance to add Title 3, Chapter 6 of the Municipal Code to regulate West Des Moines massage therapy businesses.

FINANCIAL IMPACT:

This proposed Ordinance amendment should have little financial impact to the City, other than the review and processing of license applications.

BACKGROUND:

Iowa Code Chapter 152C provides for the licensing of individual massage therapists. Due to complaints and possible criminal activity occurring at some local massage therapy businesses, a few Iowa cities have enacted or are considering adopting ordinances that regulate the businesses themselves. West Des Moines has begun to experience some of these same issues at a handful of massage therapy businesses located within the City. The City's Police Department believes that it is necessary to enact an ordinance to regulate massage therapy businesses to discourage and remove any and all such businesses that engage in illegal activities from the City. It is important to regulate the businesses and not just the individuals working at massage therapy establishments. It is also the intention of this ordinance to help eliminate prostitution and human trafficking that may be occurring within the City through a handful of these establishments. It is not the intention of this ordinance to discourage legitimate, licensed massage therapists or massage therapy businesses from providing their services in West Des Moines.

The Public Safety City Council subcommittee recommended this proposed ordinance at its meeting held on December 1, 2017.

OUTSTANDING ISSUES (if any): None

RECOMMENDATION:

It is recommended that the City Council approve the first reading of this proposed Ordinance.

Lead Staff Member: Jason B. Wittgraf, Assistant City Attorney JBW

STAFF REVIEWS

Department Director	James Barrett, Chief of Police
Appropriations/Finance	
Legal	
Agenda Acceptance	MA

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	Public Safety		
Date Reviewed	12/01/17		
Recommendation	Yes	~~No~~	~~Split~~

ORDINANCE NO._____

AN ORDINANCE AMENDING THE CITY CODE OF THE CITY OF WEST DES MOINES, IOWA, 2014, BY ADDING TITLE 3, "BUSINESS AND LICENSING", CHAPTER 6, "MASSAGE ESTABLISHMENTS AND TECHNICIANS"

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA:

SECTION 1: Title 3, Chapter 6, Sections 1 – 13 is hereby amended by adding the following text.

3-6-1: PURPOSE.

State of Iowa licensed massage therapists and businesses offering massage therapy services perform an important service in addressing the health and well-being of West Des Moines residents. Unfortunately, there are businesses that advertise they provide massage therapy and/or other therapeutic services, but they engage in various illegal activities, which may include prostitution and/or human trafficking. It is not the intention of this ordinance to discourage legitimate, licensed massage therapists or massage therapy businesses from providing their services within West Des Moines. The purpose of this ordinance is to identify and address businesses that engage in the practice of massage therapy without valid licenses and/or are involved in illegal activities, which may include prostitution and/or human trafficking. Businesses providing massage therapy, but also conducting various types of illegal activity, are harmful to the health, safety, and welfare of the City and negatively impact the massage therapy profession. The implementation of this ordinance will better enable the City to proactively screen, monitor, and remove businesses that engage in illegal activity.

3-6-2: DEFINITIONS.

For the purposes of this Chapter, the following words and phrases have the meanings herein set forth, unless it is apparent from the context that a different meaning is intended.

A. "Applicant" means any person, firm, corporation, or other legal entity applying for a license to operate a massage therapy business.

B. "Employee" means any person who performs any service on the premises of a massage therapy business on a full time, part time, or contract basis, regardless of whether the person is considered an employee, independent contractor, agent, apprentice, trainee, or otherwise.

C. "License" means permission granted by competent authority to exercise a certain privilege that, without such authorization, would constitute an illegal act. The document that confers permission to a person engaged in massage therapy shall be issued by the State of Iowa Board of Massage Therapy. Massage therapy business licenses shall be issued by the City of West Des Moines.

D. "Massage patron" means any person who receives, or pays to receive, a massage or massage services from a massage therapist for value.

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

F. "Massage therapy" means performance for compensation of massage, myotherapy, massotherapy, bodywork, bodywork therapy, or therapeutic massage, including hydrotherapy, superficial hot

and cold applications, vibration and topical applications, or other therapy which involves manipulation of the muscle and connective tissue of the body, excluding osseous tissue, to treat the muscle tonus system for the purpose of enhancing health, muscle relaxation, increasing range of motion, reducing stress, relieving pain, or improving circulation.

G. "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, or applied.

H. "Premises" means the real property, or portion thereof, upon which the massage therapy business is located, including but not limited to, the buildings, grounds, private walkways, parking lots, and parking garages through which the business has access, control, or ownership.

I. "Reflexology" means manipulation of the soft tissues of the human body which is restricted to the hands, feet, or ears, performed by persons who do not hold themselves out to be massage therapists or to be performing massage therapy.

J. "Specified criminal activity" means any of the following specified crimes:
   (1) Any crime identified in Iowa Code Chapter 709 – Sexual Abuse (2017), Iowa Code Chapter 710 – Kidnapping and Related Offenses (2017), or Iowa Code Chapter 710A – Human Trafficking (2017);
   (2) Prostitution, leasing premises for prostitution, pimping, or pandering, as those crimes have been identified in Iowa Code Chapter 725 (2017), or any crime identified in Iowa Code Chapter 726 – Protection of the Family and Dependent Persons (2017);
   (3) Any crime identified in Iowa Code Chapter 728 – Obscenity (2017);
   (4) Any crime that requires sex offender registration pursuant to Iowa Code Chapter 692A – Sex Offender Registry (2017);
   (5) Any crime involving serious injury or death to another person, robbery, burglary, felony theft, fraud, forgery, identity theft, aggravated harassment, or stalking; and
   (6) Any criminal offense in another jurisdiction that, had the predicate act(s) been committed in Iowa, would have constituted any of the foregoing offenses.

3-6-3: LICENSE REQUIRED.

No person, firm, corporation, or other legal entity shall operate a massage therapy business, either exclusively or in connection with another business, without first obtaining a license from the City as provided in this Chapter. Licenses shall be subject to renewal on an annual basis. A separate license shall be obtained for each business or place of business. The licensee shall display the license in a prominent place in the licensed business at all times.

3-6-4: LICENSE FEE.

At the time of submittal of a massage therapy business license application, the applicant shall pay to the City Clerk the applicable license fee. The City Council shall establish the amount of the license fee for initial and renewal licenses by resolution. Any licenses surrendered, suspended, or revoked prior to the date of expiration shall not be entitled to a refund of any portion of the license fee.

3-6-5: LICENSE APPLICATION.

Application for a massage therapy business license shall be submitted on forms provided by the City Clerk's office. The application shall include the following information:

A. The address of the massage therapy business property and documentation establishing the applicant's interest in the premises on which the business will be located, which shall be in the form of a lease, deed, or other document that establishes the applicant's interest in the property.
B. The full legal name, date of birth, and residential address of each applicant, owner, manager, employee, agent, contractor, or other person who is or will be present on the premises to perform massage therapy, regardless of the legal relationship between the licensee and the persons performing massage therapy services.
C. Dates and locations of other places the applicant has owned or operated as a massage therapy business.
D. Each new applicant, owner, manager, employee, agent, contractor, or other person who is or will be present on the premises to perform massage therapy, who resides in the State of Iowa, shall provide, at the applicant's expense, an officially sealed State of Iowa Division of Criminal Investigation (DCI) personal background check to the City, which is dated no more than thirty (30) days prior to the application. Those who do not reside in the State of Iowa shall provide, at the applicant's expense, an equivalent personal background check from the applicant's state of residence.
E. Each new applicant, owner, manager, employee, agent, contractor, or other person who is or will be present on the premises to perform massage therapy shall be fingerprinted and photographed by the City's police department at the applicant's expense.
F. A statement as to whether each applicant, owner, manager, employee, agent, contractor, or other person providing massage therapy on behalf of the massage therapy business has ever been convicted of specified criminal activity as defined in this Chapter. The statement shall include details regarding the type of each charge and the date and location of the incident(s) in question.
G. A statement as to whether the applicant, owner, manager, employee, agent, contractor, or other person providing massage therapy on behalf of the massage therapy business has had any license to perform massage therapy denied, revoked, or suspended in any city, county, state, or any country and the reason for the denial, revocation, or suspension.
H. A copy of a state government issued photo identification of each new applicant, owner, manager, employee, agent, contractor, or other person present on the premises who has or will provide massage therapy, or other proof that the person is legally authorized to work in the United States.
I. Provide proof of current State of Iowa massage therapy licenses for all persons present on the premises who have or will provide massage therapy.
J. All applicants and licensees shall be required to promptly notify the City during the application review or the term of the license if there are any new owners, managers, employees, agents, contractors, or other persons who are or will be present on the premises to perform massage therapy and shall immediately submit updated information to the City pursuant to this Chapter, including but not limited to a personal background check, photographing, fingerprinting, and proof of identification, as well as any amendments to the statements provided as required by this Chapter.

3-6-6: GRANTING OR DENIAL OF LICENSE.

License applications shall be reviewed by the City and the City shall either grant or deny the license. The City shall inform the applicant regarding the reasons for a license denial.

3-6-7: CONDITIONS GOVERNING ISSUANCE.

A. No license shall be issued if the applicant or any of its owners, managers, employees, contractors, agents, or other persons performing massage therapy at the massage therapy business has a criminal conviction for specified criminal activity as defined in this Chapter or who is a registered sex offender. No license shall be issued if the applicant has been denied a license by another community unless the applicant has provided the City with sufficient proof that the basis for the license denial has been remedied.

B. Licenses shall be issued only if the applicant and all of its owners, managers, employees, contractors, agents, or other persons performing massage therapy at the massage therapy business are free of convictions for specified criminal activity as defined in this Chapter or which relate directly to such person's ability or fitness to legally and safely perform the duties and discharge the responsibilities of the licensed activity.

C. Licenses shall only be issued to applicants who have provided all of the information requested in the application, have paid required license fees, and have cooperated with the City during its review of the application.

D. If issued, the license shall be displayed in a conspicuous place on the business premises so that it can be readily seen by the public upon entering the business.

3-6-8: LICENSE PERIOD.

Licenses shall be granted by the City on an annual, calendar year basis. Each license issued shall terminate on December 31 of that year. Licensees shall obtain a renewal license from the City prior to expiration of an existing license. Licensees shall apply to the City for a renewal license by December 1 of that year to allow the City sufficient time to review a license renewal application.

3-6-9: EXEMPTIONS.

This Chapter shall not apply to the following businesses:

A. Businesses who employ or provide the services of persons who are licensed to practice medicine or surgery, osteopathic medicine or surgery, chiropractic, cosmetology arts and sciences, or podiatry in the State of Iowa; or athletic trainers, nurses, occupational therapists, physical therapists, or physician assistants licensed, certified, or registered in the State of Iowa or acting under the prescription or supervision of a person licensed to practice medicine or surgery or osteopathic medicine and surgery in the State of Iowa.

B. Massage therapists who are employed or are contracted to perform massage therapy in a business identified in Section 3-6-8(A) of this Code.

C. Businesses who employ or provide the services of persons who are licensed, registered, or certified in another state, territory, the District of Columbia, or a foreign country when incidentally and temporarily present in the State of Iowa to teach a course of instruction related to massage and bodywork therapy.

D. Businesses which offer the services of students enrolled in a program recognized by the State of Iowa Board of Massage Therapy while completing a clinical requirement for graduation performed under the supervision of a licensed person.

E. Businesses who employ or provide the services of persons practicing reflexology.

F. Businesses who employ or provide the services of persons engaged within the scope of practice of a profession with established standards and ethics utilizing touch, words, and directed movement to deepen awareness of existing patterns of movement in the body as well as to suggest new possibilities of movement, provided that the practices performed or services rendered are not designated or implied to be massage therapy. Such practices include, but are not limited to, the Feldenkrais method, the Trager approach, and mind-body centering.

G. Business who employ or provide the services of persons engaged within the scope of practice of a profession with established standards and ethics in which touch is limited to that which is essential for palpitation and affectation of the human energy system, provided that the practices performed or services rendered are not designated or implied to be massage therapy.

H. Business who employ or provide the services of persons incidentally present in the State of Iowa to provide services as part of an emergency response team working in conjunction with disaster relief officials.

3-6-10: GROUNDS FOR DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

In addition to any other reasons set forth in this Chapter, it shall be grounds for denial, suspension, and/or revocation of a massage therapy application or business license if one or more of the following conditions have occurred:

A. If the applicant or licensee has not complied with or has a history of violations of the laws and ordinances that might adversely impact public health or safety.

B. If the applicant or licensee solicits or advertises to offer services that are in violation of this Chapter.

C. If the applicant or licensee has been convicted of any violation, reasonable related to the activity to be or that has been licensed, or has occurred on the licensed premises, of any city ordinance, state statute, or federal law.

D. If there has been any fraud or deception involved in the license application process.

E. If the licensee has been found to be in control or possession of any narcotic drugs or controlled substances on the business premises for which they are licensed to operate, possession of which is illegal as defined by city ordinance, state statute, or federal law.

F. If the applicant or licensee has engaged in willful disregard of health or safety codes and regulations.

G. If the applicant fails to provide all of the information required by this Chapter, including any failure to promptly submit updated information.

H. If the licensee permits an unlicensed individual or unlicensed individuals to conduct massage therapy services at the licensee's premises.

I. If the licensee refuses to allow any police officers or government officials to inspect the premises or operations.

J. If the licensee has been found to be in violation of the provisions of this Chapter or the Iowa Code.

K. If the business promotes its services through websites that are known to advertise services that are illegal.

3-6-11: NOTICE; APPEAL.

A. Notice: The City Clerk shall have the applicant or licensee served with notice either in person or by regular mail to the licensee's address shown on the license application notifying the licensee of the license denial, suspension, or revocation and the specific reason(s) for such action. The applicant or licensee shall be prohibited from any further activities covered by the license during the term of any suspension or revocation, including during any appeal periods unless otherwise allowed by court order.

B. The applicant or licensee shall have ten (10) calendar days from the date of the notice to appeal the City's denial, suspension, or revocation of a massage therapy business license. The appeal must be in writing and filed with the City Clerk during normal City Hall business hours. The municipal code hearing officer, as provided in section 4-4-9 of this Code, shall hear the appeal and may reverse, modify, or affirm the City's decision.

C. The applicant or licensee or the City may then appeal an adverse decision by the municipal code hearing officer to the Polk County, Iowa, District Court within thirty (30) calendar days from the date of the hearing officer's decision.

D. Failure to appeal any decision within the provided time frame shall constitute a waiver of any right to contest the decision.

3-6-12: RESTRICTIONS AND REGULATIONS.

A. Compliance with Law. The licensee and all of its employees and contractors shall comply with all applicable regulations and laws of the City and State of Iowa.

B. Person in Charge. If the applicant or licensee is a partnership, corporation, or other legal entity, the applicant or licensee shall designate a local representative to serve as agent for service of notices and other process relating to the business and provide the local representative's telephone number, e-mail address, and mailing address. The applicant or licensee shall promptly notify the City Clerk in writing of any change to the identity or contact information of the local representative.

C. Hours of Business. The licensed premises shall not be open for business nor shall patrons be permitted on the premises between the hours of 10:00 p.m. and 7:00 a.m. No person shall be or remain inside the licensed premises between the hours of 11:00 p.m. and 6:00 a.m.

D. Each licensed business shall have at least one licensed massage therapist on the premises at all hours that the business is occupied by patrons or is open to the public. If, during an inspection, there is no licensed massage therapist on the premises, the business must cease operations and close until a licensed massage therapist is on the premises.

3-6-13: UNLAWFUL ACTS; PENALTY.

A. A person who commits or attempts to commit, conspires to commit, or aids or abets in the commission of an act constituting a violation of this Chapter, whether individually or in connection with one or more persons, or as principal, agent, or accessory, has committed an unlawful act for purposes of this Chapter. A person who falsely, fraudulently, forcibly, or willfully, induces, causes, coerces, permits, or directs another person to violate a provision of this Chapter has also committed an unlawful act for purposes of this Chapter.

B. Commission of any act declared unlawful and in violation of the provisions of this Chapter shall constitute a simple misdemeanor punishable as provided in Section 5-2-1 of this Code. Failure to comply with the provisions of this Chapter shall also constitute a municipal infraction punishable pursuant to Section 1-4-1 of this Code.

SECTION 2. REPEALER. All Ordinances or parts of Ordinances in conflict with the provision of this Ordinance are hereby repealed.

SECTION 3. SAVINGS CLAUSE. If any section, provision, sentence, clause, phrase, or part of this Ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any provision, section, subsection, sentence, clause, phrase, or part hereof not adjudged invalid or unconstitutional.

SECTION 4. EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage, adoption, and publication as required by law.

PASSED AND APPROVED this _____ day of _____, 201__.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson, City Clerk