

## STAFF REPORT

To: Public Safety Committee Date: January 28, 2013  
Via: Jeff Richardson, Assistant City Manager  
From: Kelly Whitlock, Assistant City Attorney  
Subject: Massage and Bodywork Therapy Regulations Revisions

Summary Statement: The consideration of amendments to Article III of the City's Code of Ordinance relating to massage and bodywork therapy regulations.

Review: The Massage and Bodywork Therapy Practice Act (N.C.G.S. §§90-621 et seq) was enacted by the North Carolina General Assembly in 1998 in which licensure became mandatory for all practicing massage and bodywork therapists. The North Carolina Board of Massage and Bodywork Therapy ("Board") is the agency responsible for implementing and administering the regulatory program for individual therapists and for schools of massage and bodywork therapy. The Board is authorized to evaluate the qualifications and requirements of applicants for licensure and enforce the laws and rules related to the practice, which includes disciplinary action. Pursuant to the Act, cities can regulate massage and bodywork therapists as long as cities do not impose regulations that are inconsistent with state law.

In addition to obtaining a license to practice, massage and bodywork therapists are required to obtain a statewide privilege license pursuant to N.C.G.S. §105-41. Under this law, cities may not levy an additional privilege license tax on professionals who are required to have this statewide privilege license.

The City's current massage therapy ordinance was first enacted in 1995 and requires massage and bodywork therapists and establishments to apply for and obtain a City privilege license. It further requires licensees to file with the Chief of Police the names, addresses, and numbers of all employees and to maintain records of the names and addresses of the persons receiving massages at such establishments which are subject to inspection by the Chief of Police. The current ordinance also consists of the following prohibitions: 1) massages before 8:00 am or after 10:00 pm; 2) massages to any person under the age of 21 except if accompanied by a parent or guardian or upon written order of a physician; 3) the employment of any person under the age of 21 years in the operation of a massage business; and 4) massaging of private parts of another for hire. The privilege license is subject to revocation or suspension if a violation of the ordinance occurs.

The City's ordinance has not been revised since it was first enacted and revisions to the ordinance are required in order to be consistent with state law. In addition, after thorough review, certain regulations have been deemed unnecessary for effective enforcement and should be updated.

The proposed ordinance consists of the following revisions to be consistent with state law:

- 1) Revision of definitions section
- 2) Deletion of City privilege license requirements
- 3) Revision of the prohibition of employment of minors under the age of 21 in massage therapy establishments to minors under the age of 18.

The proposed ordinance contains the following deletions and revisions for more effective enforcement:

- 1) Deletion of the requirement that names, addresses and phone numbers of employees in massage therapy establishments must be filed with Chief of Police
- 2) Deletion of the requirement that massage therapy establishments maintain records of persons receiving massages and subject to inspection by the Chief of Police
- 3) Revision of the prohibition of hours of operation from 10:00 p.m. to 8:00 a.m. to 11:30 p.m. to 5:00 a.m.
- 4) Revision to the prohibition of massages to minors under the age of 21 to minors under the age of 18 except if accompanied by a parent or upon written order of a physician

Staff reviewed the massage therapy and bodywork ordinances of 8 North Carolina cities in addition to the City's and found the following:

	Asheville	Chapel Hill	Fayetteville	Wilmington	Charlotte	Raleigh	Greenville	Durham	Greensboro
City Privilege license	X			X	X Massage businesses- health certificates				X-if not a massage therapist with state license
Regulatory/ Business License			X – require health certificates			X	X-require health certificates	X	
Hours of operation prohibition	X 10pm-8 am		X- 10:00 pm-8:00 am	X- 10:00 pm-8:00 am	X	X- 11:30 pm-5:00 am	X-10 pm-8 am		
Minors prohibition	X- 21 yr olds employ and treat		X- patronage-18 yr olds except by order of physician	X- patronage-18 yr olds except by order of physician		X employment-18 yr olds	X- patronage 18 yr olds except by order of physician		
Opposite sex prohibition			X- except by order of physician	X-except by order of physician	X- massage businesses		X-except by order of physician		
Private parts prohibition	X				X- massage businesses			X	
Names of employees filed w/Chief	X		X	X		X- include on application	X		
Records maintained of persons receiving massages	X			X			X		

Pros:

- Proposed ordinance consistent with state law
- Less restrictions on ability of massage therapists and establishments to operate their business
- Hours of operation expanded for massage therapists and establishments
- Persons of the age of 18, 19 or 20 are permitted to receive massages without a doctor's order or parental accompaniment
- Persons of the age of 18, 19 or 20 are permitted to work in a massage therapy and bodywork establishment

Cons:

- None identified at this time.

Recommendation: Staff recommends approval of the proposed ordinance revisions. Upon approval, staff will implement outreach to massage and bodywork therapists and establishments to gather input on the proposed revisions prior to staff's presentation to City Council.

Attachment: (1) Proposed Ordinance