

PORTLAND CITY COUNCIL
Ionia County, Michigan

Mayor Pro-Tem Clement, supported by Council Member VanSlambrouck, made a motion to adopt the following ordinance:

ORDINANCE NO. 44A

AN ORDINANCE TO AMEND CHAPTER 24 OF THE PORTLAND CITY CODE OF ORDINANCES BY ADDING SECTIONS 24-1 THROUGH 24-29 TO LICENSE AND REGULATE MASSAGE THERAPISTS AND MASSAGE ESTABLISHMENTS

THE CITY OF PORTLAND ORDAINS:

SECTION 1. AMENDMENT. Chapter 24 of the City of Portland Code of Ordinances is amended to by adding Sections 24-1 through 24-29 which will read as follows:

Sec. 24-1 Massage License required.

- (a) Except as otherwise provided in this article, it is unlawful for any person to act as a massage therapist or instructor or to operate a massage establishment or massage school within the city without first obtaining a license from the city. For purposes of this article, "massage therapist" means a person who is compensated for the practice of massage but does not include health professionals licensed under the Public Health Code of Michigan.
- (b) The provisions of this article pertaining to massage establishments do not apply to:
 - (1) A licensed medical doctor, osteopath, chiropractor, nurse, or physical therapist;
 - (2) A person engaging in the practice of massage on his or her spouse or relative within the first degree of consanguinity in either of their residences;
 - (3) A barber, manicurist, beautician, cosmetologist, or esthetician who is licensed under the laws of this state, the laws of another state within the United States, or federal law, and who practices within the established limits of that license, and who administers a massage in the normal course of his or her duties; provided, however, that the barber, manicurist, beautician, or cosmetologist performs massage only on the face, hands, feet, or neck of another person, and performs massage for beautifying or cosmetic purposes only.
- (c) In any prosecution for violation of this section, the exemptions constitute affirmative defenses.

Sec. 24-2. Application fee.

The city council may, from time to time by resolution, set a nonrefundable application fee for a massage establishment or massage school license. The city council may also require a massage establishment or massage school license applicant to pay the reasonable costs of conducting any inspections or verifying any of the information submitted by the applicant.

Sec. 24-23. Requirements for license.

An application for a license to operate a massage establishment or massage school is made to the city clerk.

- (a) A massage establishment or massage school must be operated by a licensed massage therapist.
- (b) To obtain a license, a massage therapist must possess the following:
 - 1. Proof of graduation from a school of massage licensed by the State of Michigan or current licensure by another state with equivalent standards of 600 class hours of education from a state licensed school in the United States; and either
 - 2. Proof of current professional membership in the American Massage Therapy Association or other national massage therapy organization with comparable prerequisites for certification, including liability insurance; or
 - 3. Proof of certification from the American Massage Therapy Association.
- (c) The license application must include the following:
 - 1. The name and residence of each applicant. If the applicant is a corporation, the names and residences of all the directors, officers, and shareholders owning a 10-percent interest or more, either directly or indirectly or beneficially, must be given. If the applicant is a partnership, the names and residences of each partner must be given.
 - 2. The name and residence of the operator(s) and of each employee.
 - 3. A scaled drawing of the area designated as the massage establishment or massage school. If that area encompasses only part of the premises, the drawing must specify the use of all other areas within the premises.

- (d) A license will not be granted until the clerk receives the following:
1. A certificate signed by the building inspector showing that the physical standards for a massage establishment or massage school in this ordinance have been met, and that the zoning ordinance, building code, electrical code, plumbing code, and any other relevant standards have been met;
 2. A certificate from the chief of police that the applicant, the operator(s) and the employees have not been convicted of any felony, the offense of prostitution, failure to obey the lawful command of a police officer, indecent exposure, solicitation for immoral purposes, criminal sexual conduct, or a violation of any criminal obscenity statute or ordinance within the eight years prior to the date of the license application.

Sec. 24-24. Standards for premises.

Each massage establishment or massage school must comply with the following standards:

- (a) All tables, tubs, shower stalls and floors (except reception and administrative areas) must be made of nonporous materials that may be readily disinfected.
- (b) Separated closed containers must be provided for wet towels and waste materials.
- (c) All equipment, shower stalls, toilets, lavatories, and any other accouterments must be regularly treated by disinfectants and must be maintained in a clean and sanitary condition at all times.
- (d) No part of the quarters where patrons are massaged may be used for or connected to any bedroom or sleeping quarters. No person may sleep in any massage establishment or massage school.

Sec. 24-25. Sanitation standards, employees, operators and patrons.

Each massage establishment or massage school shall comply with the following standards in providing services to patrons:

- (a) No person may be serviced who is infected with any fungus or any other skin infection, nor may any service be performed on a patron exhibiting skin inflammation or eruptions.
- (b) All personnel must wash his or her hands in hot water with soap before giving any service or treatment to each separate patron.
- (c) All towels, tissues, sheets, or other coverings may be used singularly for each patron, and must be discarded for laundry or disposal immediately after use.

- (d) Non-disposable tools of the trade must be disinfected after use upon each patron.

Sec. 24-26. Inspections.

Any massage establishment or massage school licensed under this division must be open to inspection by the building inspector, fire chief, or the police department at any time, to assure compliance with the provisions of this article.

Sec. 24-27.- Sexual acts prohibited.

It is unlawful for any owner, operator, employee, or student of a massage establishment or massage school to promote, offer, or engage in public nudity, as defined in subsection 18-191 of this Code of Ordinances, or any activities prohibited by article VII of Chapter 18 of this Code of Ordinances, at any establishment licensed or required to be licensed under this division.

Sec. 24-28. Grounds for revocation of license.

Any license granted herein may be revoked for any of the following reasons:

- (a) A violation of any of the standards or requirements in this article.
- (b) A violation of the city zoning ordinance, building code, plumbing code, or electrical code.
- (c) When any owner, operator, or employee of a massage establishment or massage school is convicted of a violation of this chapter or of state law relating to the types of offenses enumerated in section 24-27, or any other similar sexual offense occurring while on the business premises.

Sec. 24-29. Procedures for revocation.

With proper grounds, a license issued under to this chapter may be revoked on the request of the city's building official, the city's police chief, the city clerk, or the city manager in the following manner:

- (a) The official requesting the revocation will cause written notice of the revocation, including a statement of the grounds for revocation, to be delivered to the licensee. The notice must state that the licensee may, within 14 calendar days of the date of the notice, file a written request to appeal with the city.
- (b) If a timely written request is made, the mayor will schedule a public hearing before the mayor, a council member appointed by the mayor, and a city department head appointed by the mayor who was not involved in the request to revoke the license. That hearing must be held within 30 calendar days of the request for appeal. Notice of the hearing must be given in writing to the licensee and the involved city officials, stating the date, time, and place of the hearing. At the hearing, the city may be represented by the official initiating the request for

revocation or by the city attorney. A majority of the hearing panel is required to either affirm the revocation, to reverse the revocation, or to take action less than revocation, such as a license suspension. The panel must issue a written decision within 14 calendar days after the hearing is completed.

(c) If a request for appeal is not timely filed or if the hearing panel affirms the revocation, the revocation will take effect in accordance with the original request.

(d) A revocation or action for a revocation does not affect the city's rights with respect to any criminal prosecution or any civil proceeding brought pursuant to or to enforce any provision of this chapter. The hearing panel's determination with respect to revocation does not bar any the criminal or civil proceeding.

SECTION 4. PUBLICATION AND EFFECTIVE DATE. This Ordinance must be published and recorded as provided in the City Charter and takes effect on the date of publication, but not less than ten (10) days after its adoption by the City Council.

Ayes: Clement, VanSlambrouck, Calley, Barnes

Nays: Fabiano

Absent: None

Abstain: None

ORDINANCE DECLARED ADOPTED.

Dated: December 6, 2010

James E. Barnes, Mayor

Monique I. Miller, City Clerk

Introduced: November 15, 2010

Adopted: December 6, 2010

Published: December 12, 2010

Effective: December 16, 2010