

**VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
JANUARY 19, 2010 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Massage Establishment License Amendment	Resolution ✓ Ordinance Motion Discussion Only	Enza Petrarca Village Attorney

SYNOPSIS

An ordinance has been prepared amending Chapter 8 of the Village Code concerning the licensing of Massage Establishments. The amendment would require the licensing of approved massage schools if such schools are offering massage services to the public for compensation.

STRATEGIC PLAN ALIGNMENT

The Five Year Plan and Goals for 2008-2013 identified *Strong Diverse Local Economy*. Supporting this goal is the objective *More Businesses in Downers Grove*.

FISCAL IMPACT

N/A.

RECOMMENDATION

Approval on the February 2, 2010 active agenda

BACKGROUND

Universal Spa Training Academy has contacted the Village seeking licensure to operate within the Village as a Massage Establishment. This establishment is a training academy where students can earn their required 500 hours of practical experience in order to obtain their state license to practice massage therapy. It is an approved massage school licensed by the State Board of Education. The general public is charged a fee to receive a student massage which covers the business cost to the school. The student does not receive any compensation for massage services. The Village's ordinance currently provides that if a massage is being given for compensation within the Village, then the establishment must have a Village massage establishment license. The Village ordinance only allows establishments with state licensed therapists to obtain a Village massage establishment license. As such, the school would be unable to qualify for a Village license and its students would be unable to perform massage to earn their practical experience unless no compensation was received. The proposed amendment specifically excludes Approved Massage Schools from the ordinance's requirement that all therapists be licensed by the State and would allow the school to become a licensed massage establishment regulated by the Village.

ATTACHMENTS

Ordinance
Correspondence

Massage Licensing

ORDINANCE NO. _____

**AN ORDINANCE AMENDING PROVISIONS
FOR MASSAGE ESTABLISHMENT LICENSING**

BE IT ORDAINED by the Village Council of the Village of Downers Grove in DuPage County, Illinois, as follows: (Additions are indicated by **shading**/underline; deletions by ~~strikeout~~):

Section 1. That Section 8.2001. is hereby amended to read as follows:

8.2001. Definitions.

Approved Massage School A school which has received certification from the Illinois State Board of Education as a massage therapy school and has presented evidence of such certification to the Village Massage Business Commissioner.

Code. The Downers Grove Municipal Code, as from time to time amended.

Existing Massage Establishment. A Massage Establishment for which a license has been issued under a prior version of this Ordinance has been issued as of August 1, 1999.

Individual Therapist Massage Establishment. A Massage Establishment which is operated as a separate and distinct business and which includes as an employee, independent contractor, joint venture, affiliate, partner or in any other fashion, not more than one Massage Therapist.

Licensed Premises. The place or location described in a Massage Establishment License where a Massage Establishment is authorized to operate.

Massage. Any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating of the external soft parts of the body with the hands or with aid of any mechanical electrical apparatus or appliances with or without rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations used in this practice, under such circumstances that it is reasonably expected that the person to whom treatment is provided, or some third party on such persons behalf, will pay money or give other consideration or any gratuity therefor.

Massage Business Commissioner. The Downers Grove Village Manager, or such persons designee.

Massage Establishment. Any business entity, in any form, including but not limited to any person, corporation, sole proprietorship, joint venture, association, firm, partnership, limited liability corporation or any other form, having a source of income or compensation derived from the practice of massage and which has a fixed place of business where any person, corporation, sole proprietorship, joint venture, association, firm, partnership, limited liability corporation or any other entity engages in or carries on any of such activities.

Massage Establishment Employee. Any person who works in or at, or render any services directly related to the operation of, a Massage Establishment; provided, however, that this definition shall not include persons delivering goods, materials, food and beverages, or performing maintenance or repairs, to the Licensed Premises.

Massage Establishment License. A Massage Establishment License as provided in this Ordinance.

Massage Patron. Any individual, other than a Massage Establishment Employee, present in or at any Massage Establishment at any time when such Massage Establishment is open for business; provided, however, that this definition shall not include persons delivering goods, materials, food and beverages, or performing maintenance or repairs, to the Licensed Premises.

Massage Therapist. Any person who, for any consideration whatsoever, engages in the practice of massage.

Massage Licensing

Nude or State of Nudity. A state of dress or undress that exposes to view (i) less than completely and opaquely covered human genitals; pubic region; anus; or female breast below a point immediately above the top of the areolae, but not including any portion of the cleavage of the female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other wearing apparel, provided that the areolae is not exposed; or (ii) human male genitals in a discernibly turgid state, even if completely and opaquely covered, or any device covering that, when work, simulates male genitals in a discernibly turgid state.

Ordinance. Article XX of the Downers Grove Municipal Code, commonly referred to as the Village of Downers Grove Massage Business Ordinance or Massage Ordinance, as from time to time amended.

Pending Massage Establishment. A Massage Establishment for which a properly completed application for license under a prior version of this Ordinance is pending as of June 1, 1999.

Reflexology. The application of steady, deep and light pressure over the human feet for the purpose of producing healing and relaxation in all parts of the body.

Reviewing Departments. The Village Manager, the Legal Department, the Fire Department, the Police Department and the Community Development Department.

Specified Criminal Act. Any unlawful lewd, indecent, or immoral conduct, including specifically, but without limitation, any of the lewd, indecent, or immoral criminal acts specified in any of the following statutes, or such amended or successor statutes as may from time to time be adopted:

1. Article II of the Illinois Criminal Code (sex offenses).
2. Section 26-4 of the Illinois Criminal Code, 720 ILCS 5/330 (unauthorized videotaping).
3. Section 33D-1 of the Illinois Criminal Code, 720 ILCS 5/330-1 (contributing to the criminal delinquency of a juvenile).
4. The Obscene Phone Call Act, 720 ILCS 135/0.01 et seq.
5. The Wrongs to Children Act, 720 ILCS 150/0.01 et seq.
6. The Improper Supervision of Children Act, 720 ILCS 640/0.01 et seq.
7. The Sale of Immoral Publications to Children Act, 720 ILCS 670/0.01 et seq.
8. The Cannabis Control Act, 720 ILCS 550/1 et seq.
9. The Illinois Controlled Substance Act, 720 ILCS 570/100 et seq.
10. Sections 15-14 of the Downers Grove Municipal Code entitled "House of Ill Fame".
11. Sections 15-15 of the Downers Grove Municipal Code entitled "Public Indecency".
12. Sections 15-16 of the Downers Grove Municipal Code entitled "Obscenity".

Specified Sexual Activities. Any of the following:

1. Fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts.
2. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy.
3. Masturbation, actual or simulated.
4. Human genitals in a state of sexual stimulation, arousal, or tumescence.
5. Excretory functions as part of or in connection with any of the activities set forth in Subsections 1, 2, 3, or 4 of this definition.

Transfer of ownership or control of a Massage Establishment. Any of the following:

1. The sale, lease, or sublease of the business;
2. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
3. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business.
4. Any person not previously listed as an applicant pursuant to Section 8-2005 acquires an ownership interest in the business of twenty percent or more.

Section 2. That Section 8.2014. is hereby amended to read as follows:

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8.2014. Additional Regulations Applicable to Licensed Massage Establishments.

(a) Animals. No animals, except only for seeing-eye dogs to assist the blind, shall be permitted at any time at or in any Licensed Massage Establishment.

(b) Restrooms. All restrooms in a Licensed Massage Establishment shall be equipped with standard toilets, sinks, and other traditional lavatory facilities.

(c) Restricted Areas. No Massage Patron shall be permitted at any time to enter into any of the non-public portions of any Licensed Massage Establishment, including specifically, but without limitation, any storage areas or dressing or other rooms provided for the benefit of Massage Establishment Employees. This subsection shall not apply to persons delivering goods and materials, food and beverages, or performing maintenance or repairs to the Licensed Premises; provided, however, that any such persons shall remain in such non-public areas only for the purposes and to the extent and time necessary to perform their job duties.

(d) Every Massage Establishment Licensee shall cause the Massage Establishment License to be framed, covered by glass, and hung at all times in plain view in a conspicuous place on the Massage Establishment Licensed Premises so that it can be easily seen and read at any time by any person entering the Massage Establishment Licensed Premises.

(e) At all times during the hours of operation of a Licensed Massage Establishment there shall be present a manager of the Licensed Massage Establishment Licensee who shall be not less than eighteen years of age.

(f) No Massage Establishment Licensee shall permit any person to remain in or upon Massage Establishment Licensed premises who commits any Specified Criminal Act.

(g) ~~Except for Approved Massage Schools.~~ No Massage Establishment Licensee shall employ as a Massage Therapist any person unless said person has obtained and has in effect a Massage Therapist Permit issued pursuant to State law.

(h) No portion of a Licensed Massage Establishment shall be designed, modified, equipped or used as a residence or for residential purposes. No person shall reside, board or otherwise use a Licensed Massage Establishment as a residence.

Section 3. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 4. That this ordinance shall be in full force and effect from and after its passage and publication in the manner provided by law.

Mayor

Passed:

Published:

Attest: _____
Village Clerk

WIEDEL, HUDZIK, RUSS & PHILIPP

A Partnership of Professional Corporations

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November 17, 2009

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Mr. David Fieldman
Village of Downers Grove
801 Burlington
Downers Grove, IL 60515-4776

Re: Universal Spa Training Academy

Dear Mr. Fieldman:

Please be advised that I represent a client by the name of Universal Spa Training Academy. My client is a state-licensed beauty and massage school which has been located in Westmont for many years. The school is being relocated to 340 Burlington Avenue, Downers Grove. My client has signed a lease with the landlord for this property. Part of the training provided by this school is massage training. Pursuant to the Village of Downers Grove's current massage license, all masseuses must be state licensed in order to charge a fee for their services.

The issue that has arisen with regard to my client's massage license from the Village of Downers Grove is that a fee will be charged for the students to perform their state mandated hours of training even though the students are not licensed massage therapists. The purpose of the fee is to cover the costs to the school for the materials used in connection to the massage, such as the laundry services, oils and other necessary massage equipment.

I have spoken with Beth Janicki-Clark of the Village's legal department with regard to this issue and have discussed the possibility of amending the Village's massage therapy ordinance to provide for "approved massage schools" as an exemption to the license requirement for charging for massage services. I would appreciate the Village considering this amendment so that this business can relocate to the Village of Downers Grove. The school, previously in Westmont, has a good reputation and has had no incidents within the Village of Westmont during their tenure in Westmont.

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Once you have had an opportunity to consider this issue, please contact me.

Sincerely,

WIEDEL, HUDZIK, RUSS & PHILIPP

James F. Russ, Jr.

JFR/brd

cc: Ms. Beth Janicki-Clark
Mr. Chris Tyler