

COUNCIL ACTION FORM

SUBJECT: **ORDINANCE REGULATING MASSAGE ESTABLISHMENTS**

BACKGROUND:

At the August 13, 2019 City Council meeting, the Council directed staff to draft an ordinance to regulate massage establishments. Adopting regulations regarding massage has been encouraged by massage practitioners and others interested in eliminating the practice of illicit massage and human trafficking in the community. The Council directed that the ordinance to be drafted include six key elements:

1. The ordinance is to be based on the model used by the City of Des Moines
2. Businesses are required to produce information about the business and its practitioners upon demand by the City
3. A manager must be designated in writing. This person is to be held responsible for compliance and for providing information as required in the ordinance
4. The manager must be a resident of Iowa and shall consent to serve as an agent to receive notices relating to the business
5. Practitioners may not provide massage services between the hours of midnight and 5:00 a.m., except through an exception process to be determined by City staff
6. Photos of each practitioner must be on display in waiting and therapy rooms where massage services are provided.

The attached draft ordinance accomplishes the objectives outlined by the City Council at the August 13th meeting. City staff shared the draft ordinance with two individuals for feedback: Michelle DeMarie, who shared the draft with other massage therapy practitioners, and George Belitsos, who shared the draft with human trafficking prevention advocates. The comments from both groups are attached.

If the City Council approves the ordinance, staff will begin the process of notifying massage establishments of these new requirements.

ALTERNATIVES:

1. Approve first reading of the attached ordinance regulating the practice of massage therapy.
2. Refer the ordinance back to staff for modifications.
3. Do not approve first reading of a massage therapy regulation ordinance.

CITY MANAGER'S RECOMMENDED ACTION:

The attached ordinance includes the components City Council directed staff to incorporate. The ordinance language has been reviewed with the individuals who initially requested City regulation of massage practitioners. City staff believes this ordinance provides the desired scrutiny of massage providers, without significantly increasing the administrative burden on providers or the Police.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby approving first reading of the attached ordinance regulating the practice of massage therapy.

ATTACHMENT 1:
COMMENTS FROM MASSAGE PRACTITIONERS

Sec. 11.9. Massage Therapy.

(1) Purpose.

The State of Iowa licenses massage therapists pursuant to Iowa Code Chapter 152C. Licensed massage therapists and businesses offering massage therapy services perform an important service in addressing the health and well-being of Ames residents. The purpose of this ordinance is to help 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.

Please consider omitting the reference to prostitution and/or human trafficking. 1) other illegal activities are possible and b) legitimate, licensed professionals do not want any association with the identified activities (prostitution/human trafficking) potentially implied

(2) Definitions.

For purposes of this Section, unless the context otherwise requires:

- (a) "Massage therapist" means a person licensed under Iowa Code Chapter 152C to practice the health care service of the healing art of massage therapy in the City of Ames.
- (b) "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, advertised or applied.
- (c) "Massage therapy" shall be as defined in Iowa Code Chapter 152C.
- (d) "Placard" means a poster or sign for public display affixed to a structure to provide notice to the public that the premises are unsafe for entry.

(3) State License Required.

The practice of massage therapy, as defined in Iowa Code Chapter 152C, is prohibited by unlicensed individuals. It is unlawful for a person to engage in or offer to engage in the practice of massage therapy, or use in connection with the person's name, the initials "L.M.T." or the words "licensed massage therapist", "massage therapist", "masseur", "masseur", or any other word or title that implies or represents that the person practices massage therapy, unless the person possesses a license issued under the provisions of Iowa Code section 152C.3.

(4) Display of License and Photograph.

Each massage therapist must prominently display in any customer waiting area and any room in which massage therapy is performed, a copy of the massage therapist's valid massage therapy license and a color photograph of the massage therapist whose license is displayed. The color photograph shall measure no smaller than thirty-five (35) square inches, with the face of the massage therapist clearly recognizable and occupying the majority of the photograph.

Each massage therapist must be in possession of their license at all times while doing business in the city and must, upon request of a prospective customer or City official, exhibit the license as evidence of compliance with all requirements of this Section.

Per Amy & Doug Dollison, Operations Directors with Massage Heights in Ames:

The licenses should be displayed in a **public** area and not defined as any customer waiting area which aligns with the requirement per State of Iowa code. Second, it is over-kill to have the licenses and a 5x7 photograph **both** in any waiting area and every treatment room. In their business, they have eight rooms and 14 therapists (that share rooms). The way the ordinance reads now, they will be required to have a wall of photos and licenses in every room and the lobby and don't feel that anyone would want to disrobe in a room with a wall of photos. That is not relaxing nor aesthetically appealing. Massage Heights therapists have been resistant to their photographs displayed in the lobby because they do not want people to decide which therapist they would like to see based on their looks. Would it be possible to consider omitting the requirement to display a photograph per the above and simply state one must be presented upon request?

Also; for therapists that work in multiple locations, the verbiage should read either the original or a copy of the license certificate. The State of Iowa requires LMTs who work out of multiple locations to display the original at the location he/she spends the majority of their time working; and a copy at the other location(s) is acceptable. Original certificates are issued only under the condition they are lost, destroyed or in the event of a name change and the State charges \$23 to re-issue one. The wallet card must always be in our possession when working.

Feedback from various Ames LMTs:

The proposed size of the photograph seems large; could that be reduced? Would passport size photographs be adequate size for the purposes of this requirement – not to mention easy to obtain?

Will all home-based massage therapy businesses be required to just have the license and photo in our massage room? Most of us really don't have a waiting area since we usually take the clients directly back to the treatment room.

We feel that it should be made very clear that our actual license certificates required to be on display only provide an issue date, and do not provide an expiration date. The wallet size card that is issued upon approval and renewal is the document that provides this. LMTs typically display the wallet card in the corner of the frame with the original certificate (or copy) of licensure even though the State of Iowa code doesn't require us to do so. (See photo's attached for clarification)

(5) Manager Designated.

An individual, who is a resident of the state of Iowa, must be designated to act as the manager for the massage therapy business. The name and position of the manager must be prominently displayed in the customer waiting area. The manager shall consent to serve as an agent for the service of notices and other processes related to the massage therapy business. The manager shall remain responsible for the conduct of the massage therapy business until another person has been designated as manager in writing.

The designated manager for multiple business locations may not always onsite due to work schedule, etc. ~ how will this be addressed?

(6) Information Required.

Upon request by City staff, a massage business shall immediately produce documentation including the following information:

- (a) Name of the business;
- (b) Name, email address, telephone number, and residential address of the manager of the business;
- (c) Names of all licensed massage therapists (LMTs) employed or contracted by the business and their State license numbers;
- (d) Names and addresses of all other persons who work on the business premises whether employees or independent contractors of the business along with a description of the work performed;
- (e) Name(s) of the business owner(s);
- (f) Name(s) and mailing address(es) of all individuals who have an ownership interest in the business; and
- (g) Name of the commercial tenant leasing the business premises. Doesn't the City already have this information?**

To confirm the identity of the LMT, a government issued photo identification card of the LMT and a copy of their valid and current license must be provided to City staff upon request.

(7) Hours of Operation.

No person shall be engaged in the practice of massage therapy between the hours of midnight and 5:00 a.m. unless such therapy takes place:

- (a) in a licensed medical facility;
- (b) in a licensed hospice facility;
- (c) under the specific direction or supervision of a person described in Iowa Code section 152C.9(1); or
- (d) with written approval from the Chief of Police or designee.

(8) Special provisions.

- (a) Upon a determination by the police department that a massage therapy business has employed or otherwise contracts with an unlicensed massage therapist, or is otherwise

is in violation of this section, the Chief of Police, or designee, is empowered to place placards in one or more highly noticeable locations at the massage therapy business facility. The placard(s) shall state: "Unsafe to Enter; Unlicensed Massage Therapy Must Cease and may be subject to criminal and/or civil penalty pursuant to Ames Municipal Code section XXXX." The placard(s) must remain posted until a valid state license is obtained or other legal use has been established and demonstrated to the police department. This action may be appealed pursuant to Section XX.10 of this section.

- (b) If the City has probable cause that prostitution, as defined by Iowa Code Chapter 725, or Human Trafficking, as defined by Iowa Code Chapter 710, has occurred at a property providing Massage Therapy, the police department may placard the property. This action may be appealed pursuant to Section XX.10 of this section.
- (c) No person shall remove the placard posted pursuant to subsection (a) or subsection (b) of this section without approval of the Chief of Police or designee.
- (d) No person, whether individually or in connection with one or more persons or as principal, agent, or accessory, shall continue to offer "massage therapy" services at the placarded location after a massage therapy business has been placarded as unsafe for entry unless the Chief of Police or designee has approved removal of the placard.

Would it be possible to grant a 24 hour period in order to allow the business the opportunity to reconcile any discrepancies before it is placarded and ordered to cease operation versus immediate action? The concern is that legitimate businesses who are trying to operate in good faith or possibly even law enforcement may have misinterpreted the requirements.

(9) Penalties.

A violation under this Section is declared to be a municipal infraction punishable by a civil penalty of \$500 for a person's first violation and by a civil penalty of \$750 for each repeat violation. Alternatively, violation of this Section may be charged by a peace officer of the City as a simple misdemeanor.

(10) Appeal of placard.

Should a person or business be placarded pursuant to subsection (8) above, the person or business may appeal the placarding by filing a written notice of appeal to the City Manager within seven days of the date of the placarding. The written appeal shall state the grounds of the appeal.

- (a) Upon receiving a notice of appeal, a hearing shall be convened, chaired by the City Manager or designee, to receive any testimony or other evidence that is deemed appropriate concerning the placarding.
- (b) When an appeal has been filed, the Police Department shall make a reasonable effort to notify any persons who would have had direct involvement in the situation which led to the placarding.
- (c) The appeal shall be heard by a committee appointed by the City Manager and consisting of a minimum of three people, including a member of the public, a licensed massage therapist, and the Director of Planning and Housing or their designee.
- (d) Following such hearing, the Committee may:

- (i) uphold the placarding; or
 - (ii) modify or reverse the placarding, after which the Chief of Police shall take such action as is necessary to carry out the decision of the Committee.
- (e) The decision of the Committee and the reasons for it shall be summarized in writing and provided to the person who filed the appeal.

ATTACHMENT 2:
COMMENTS FROM ANTI-TRAFFICKING ADVOCATES

From: "George Belitsos" <gbelitsos55@gmail.com>
To: "Michelle DeMarie" <mdemariamassage@gmail.com>, "Brian Phillips" <bphillips@city.ames.ia.us>, "Charles M Cychosz" <ccychosz@city.ames.ia.us>
Cc: adollison@massageheights.com, "David Martin (& Steve)" <dmartin@acm.org>, "Steve Schainker" <sschainker@city.ames.ia.us>

Date: Tuesday, October 29, 2019 10:16PM
Subject: Re: Feedback Regarding MT Ordinance Draft

Greetings. I have consulted with several anti- trafficking advocates and we have reviewed Michelle's suggested changes and concerns, and would like to respond.

Under the purpose (Section 1), we do not think that the part that Michelle struck through should be removed.

Part 4 we do not agree with Michelle's suggestion of not displaying the photographs in the lobby. We also do not agree with changing the size of the photographs.

Under Special Provisions (Section 8), we do not have a problem with the requirements in section 8d. We do not agree with Michelle's suggestion to grant a 24-hour grace period. This should not be changed.

We have no objections to the other proposed changes.

I thank Michelle for sharing her comments with us and also thank the city staff for researching and writing the proposed city ordinance.

Under

On Sun, Oct 27, 2019 at 8:18 PM George Belitsos <gbelitsos55@gmail.com> wrote:

Thanks, I'll take a look.

George P. Belitsos (Dr. George)
YSS Founder and CEO Emeritus
Chair, Iowa Network Against Human Trafficking and Slavery
www.iowanaht.org
Vice-Chair, International Board, Rotary Action Group Against Slavery
<https://ragas.online/>
Chair, Iowa Tobacco Use Prevention and Control Commission
5508 West Lincoln Way
Ames, Ia 50014
(515) 290 1909 (cell)
gbelitsos55@gmail.com

On Sun, Oct 27, 2019, 7:27 PM Michelle DeMarie <mdemariamassage@gmail.com> wrote:

Greetings Brian;

Thank you very much again for the opportunity to review the draft of the massage therapy ordinance and collect feedback from Ames LMTs. I have attached a copy of the draft and included comments directly on it. I've taken the liberty of copying in a few others who I thought