

**COUNCIL ACTION FORM**

**SUBJECT:**           **MESSAGE ESTABLISHMENT REGULATION FOLLOW-UP**

**BACKGROUND:**

At the April 16, 2019 City Council Workshop, the City Council directed staff to bring back possibilities for an ordinance that would regulate massage establishments within Ames as well as further decision points along the lines of the City of Des Moines' ordinance. Staff was also tasked with adding provisions to hold owners and managers responsible and measures to assist staff during an investigation when warranted. The goal of these measures is to address illicit massage practices and human trafficking.

**DES MOINES ORDINANCE:**

The Des Moines ordinance has two key provisions for massage establishments. It requires massage therapists: 1) to obtain a state license, and 2) to have the license in possession at all times while doing business. Noncompliance with these requirements results in a municipal infraction in addition to a misdemeanor, and the Police Department placing a notice that no person may enter the establishment. The Des Moines ordinance does not require the establishment's owner or manager to provide law enforcement with information regarding the employees in the establishment.

**PROVISIONS TO HOLD OWNERS AND MANAGERS RESPONSIBLE:**

Staff has examined sixteen ordinances that have been enacted in Iowa cities. The attachment outlines the key components of each city's ordinance.

Similar to the Des Moines ordinance, the cities of Davenport and Iowa City do not require separate local licensing. However, both cities include an additional requirement that upon request by City staff, a business must provide certain information including contact information and photo identification card for owners, managers, leasing tenant, and all licensed Massage Therapists. Failure to comply with this requirement results in the Police Department placing a notice that no person may enter the establishment.

Nine cities that require separate local licenses have language in their ordinances stating that in the case of a partnership, corporation, or other organizations, the applicant must designate a person to be manager. The manager must be a resident of Iowa, and shall consent to serve as an agent for service of notices relating to the business. The manager shall be responsible for the conduct of the business. **Although this type of requirement has been put into place in cities that require a separate local license, it could be used to place responsibility onto a designated manager, even without local**

**licensing. The City of Cedar Rapids, for example, requires applicants to designate an individual to act as the Registered Manager for the Massage Therapy Business.**

**OTHER PROVISIONS IN THE IOWA ORDINANCES:**

The Council may wish to consider aspects of other ordinances used throughout Iowa. Some of the key components of other ordinances are below:

1. Separate City license and fees

Ten of the sixteen cities studied require a separate, annual City license and charge a fee. Licensing fees range from \$25 to \$100, with renewal fees typically based on actual staff time required to process the application. Some ordinances mandate a separate license for each business location. Some require payment of an additional fee for each individual performing massage therapy. The City of Coralville requires a permit but does not charge a fee.

Most license applications require:

- Location where services are to be provided
- Names, ages, and addresses of the applicant, owner, manager, employees, and those who are or will be employed or present on the premises to perform massage therapy, and copies of government issued IDs for each
- Dates and locations where the applicant has owned or operated a massage business
- Descriptions of all crimes or other offenses for which the applicant or any person named on the application has been arrested, charged, or convicted
- Statement as to whether any license to perform massage therapy has been denied, revoked, or suspended in any city, state, county, or country
- Proof of insurance
- Proof of current State of Iowa massage therapy license.

The City of West Des Moines is the only city that mandates fingerprinting and photographing of all licensees. A number of other cities allow the Police Chief to determine whether a background check is required for applicants.

In most cases, licenses are only issued if an applicant and all of its owners, managers, employees, and agents are free of convictions and have provided the requested information.

The City of Cedar Rapids exempt an applicant from the license application and renewal process if they can provide proof they have a valid Massage Therapy Business License from another Iowa municipality that engages in a similar rigorous application process. Most cities exempt licensed health care professionals from the massage licensing requirements.

**Staff should emphasize that implementing a separate City licensing process provides additional information that can be used by the City to combat human trafficking, but also places a much higher burden on establishments.**

2. Hours of Operation

Under most ordinances that require a separate local license, massage therapy businesses will have to close between 10:00 p.m. and 6:00 a.m. The City of Clive has regulated businesses to close between 12:00 a.m. and 5:00 a.m. However, implementing this kind of restriction in local ordinances could be done without implementing a separate local licensing process.

3. Penalties

All sixteen cities have deemed it a simple misdemeanor and/or municipal infraction for violating the provisions of their ordinances. Fines range from \$100 to \$750 for the first violation.

**ALTERNATIVES:**

1. Direct staff to draft an ordinance using the Des Moines ordinance as a model, and:
  - a. Include requirements similar to Davenport/Iowa City related to providing information regarding the business and its employees upon demand by City staff.
  - b. Include requirements to designate a manager, in writing, who will be responsible for compliance and for providing information as required in the ordinance.
2. Direct staff to draft an ordinance containing other provisions. The City Council should identify what provisions it is interested in.
3. Do not proceed with preparing an ordinance to regulate massage providers at this time.

**CITY MANAGER’S RECOMMENDED ACTION:**

The City Council expressed an interest in regulating massage establishments following the April workshop. The Des Moines ordinance model, combined with requirements to provide information about practitioners upon demand and to designate a responsible manager, appear to address the aspects of an ordinance the Council desires.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1 a-b, as described above.

|                         | State License Required | Local License Required                |                                    |                                  | Application |                |                |                            | Information Required | Exemptions | Designated Manager | Restrictions on Hours of Operations | Penalty |                    |                      |
|-------------------------|------------------------|---------------------------------------|------------------------------------|----------------------------------|-------------|----------------|----------------|----------------------------|----------------------|------------|--------------------|-------------------------------------|---------|--------------------|----------------------|
|                         |                        | Waiver of Fee for Existing Businesses | Separate License for Each Business | Additional Fee for Each Employee | Insurance   | Appeal Process | Annual Review  | Photographed/fingerprinted |                      |            |                    |                                     | Placard | Simple Misdemeanor | Municipal Infraction |
| Altoona                 | x                      | x                                     | x                                  | x                                | x           | x              | x              |                            |                      | x          | x                  | x                                   |         | x                  |                      |
| Boone                   | x                      | x                                     | x                                  |                                  |             | x              | x              |                            |                      | x          | x                  | x                                   |         | x                  |                      |
| Davenport <sup>1</sup>  | x                      |                                       |                                    |                                  |             |                |                |                            | x                    |            |                    | x                                   | x       | x                  | x                    |
| Ottumwa                 | x                      | x                                     | x                                  | x                                | x           | x              | x              |                            |                      | x          | x                  | x                                   |         | x                  |                      |
| Des Moines              | x                      |                                       |                                    |                                  |             |                |                |                            |                      |            |                    |                                     | x       | x                  | x                    |
| Pleasant Hill           | x                      | x                                     | x                                  | x                                | x           |                | x              |                            |                      | x          | x                  | x                                   |         | x                  |                      |
| Cedar Rapids            | x                      |                                       | x                                  |                                  |             | x              | x <sup>4</sup> |                            |                      | x          | x <sup>5</sup>     |                                     | x       | x                  | x                    |
| Iowa City               | x                      |                                       |                                    |                                  |             |                |                |                            | x                    | x          |                    |                                     | x       | x                  | x                    |
| Urbandale               | x                      |                                       |                                    |                                  |             |                |                |                            |                      |            |                    |                                     | x       |                    | x                    |
| Clinton <sup>2</sup>    | x                      |                                       | x                                  |                                  | x           | x              | x              |                            |                      | x          | x                  | x                                   |         | x                  | x                    |
| Johnston                | x                      | x                                     | x                                  | x                                | x           | x              | x              |                            |                      | x          | x                  | x                                   |         | x                  |                      |
| West Des Moines         | x                      |                                       | x                                  |                                  |             | x              | x              | x                          |                      | x          | x                  | x                                   |         | x                  | x                    |
| Clive                   | x                      | x                                     | x                                  | x                                |             | x              | x              |                            |                      |            |                    |                                     |         |                    |                      |
| Marion                  | x                      |                                       |                                    |                                  |             |                |                |                            |                      |            |                    |                                     | x       |                    | x                    |
| Coralville <sup>3</sup> | x                      |                                       | x                                  |                                  | x           | x              |                |                            |                      | x          | x                  | x                                   | x       | x                  | x                    |
| Newton                  | x                      | x                                     | x                                  |                                  |             | x              | x              |                            |                      | x          | x                  | x                                   |         | x                  |                      |

1 - Davenport requires a city license for Reflexology Businesses

2 - Clinton requires Massage Therapy businesses to obtain a permit

3 - Coralville requires Massage Therapy businesses to obtain a permit, but does not charge a permitting fee

4 - Cedar Rapids is the only city that issues its licenses biannually

5 - Cedar Rapids is the only city that requires an individual to act as a Registered Manager