

*(Summary Publish in the Leavenworth Times on December 14, 2018)*

**ORDINANCE NO. 8092**

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF LEAVENWORTH, KANSAS, CHAPTER 26, BUSINESSES, ARTICLE III, PROVIDING SUBSTITUTE PROVISIONS AND REPEALING THE SECTION AMENDED.**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAVENWORTH, KANSAS:**

**Section 1.** That the Code of Ordinance of the City of Leavenworth, Kansas, Chapter 26, Businesses, Article III, is hereby deleted in its entirety and amended to read as follows:

**ARTICLE III. MASSAGE THERAPY**

**DIVISION 1 – GENERALLY**

**Sec. 26-66 Definitions**

- (a) *Accredited School:* Any school or institute of learning which is accredited by the State Board of Education or equivalent and approved by any state massage-specific license organization. For schools located in states that do not accredit or approve massage therapy programs, the City will consult national massage organizations such as the National Certification Board of Therapeutic Massage and Bodywork and the American Massage Therapy Association to determine if the school should be deemed accredited for purposes of this Article.
- (b) *Business Premises:* Those premises where a private or public commercial enterprise is conducted.
- (c) *Employee:* Refers to any person, other than massage therapists, who renders any service to a licensee under this Article, who receives compensation from the licensee or patron.
- (d) *Establishment Applicant:* Refers to each individual owner (if applying as an individual or a group or individuals), and to each stockholder/member who owns or holds ten percent (10%) or more of the equitable interests in any corporation, limited liability company, partnership, or other entity that applies in the name of such entity.
- (e) *Establishment Representative:* An employee, manager, independent contractor, agent, unpaid volunteer or anyone who works at or on behalf of a massage therapy establishment.
- (f) *Healing Arts Practitioner:* Refers to a person licensed under K.S.A. 65-2801, *et seq.* to practice the healing arts, including but not limited to the medicine and surgery, osteopathic medicine and surgery, or chiropractic.

- (g) *Home-Office Massage Business*: A massage business operated from a non-commercial location and used solely for scheduling appointments, billing, or other administrative purposes for an in-clients' office massage practice or an in-clients' home/hotel massage business. No massage therapy shall take place on the premises of the Home-Office Massage Business.
- (h) *In-clients' Office Massage*: Massage that is conducted on the business premises of a massage therapist's massage therapy client, and is limited to massage therapy applied only above the massage therapy client's waist. The patron must be fully clothed.
- (i) *In-clients' Home/Hotel Massage*: Massage therapy conducted at a massage client's home or residence, or in the guest rooms of hotels or bed and breakfast establishments, as provided in this Article.
- (j) *Massage Therapy or Massage*: Any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulation of the external soft parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in the practice. Massage as defined herein does not include the touching in any fashion of human genitalia.
- (k) *Massage Therapy Establishment (or Massage Establishment or Establishment)*: Any establishment where any person, firm, partnership, association, corporation, trust, or other type of entity or organization primarily engages in offering massage therapy services. An establishment may operate from a business premises or corporate location or in the establishment licensee's home subject to the requirements of this Article and the Development Regulations of the City.
- (l) *Massage Therapist*: Any person who, for any consideration whatsoever, engages in the practice of massage as herein defined.
- (m) *Patron or Client*: Any person who utilizes or receives the services of any establishment subject to the provisions of this Article and under such circumstances that it is reasonably expected that he or she will pay money or give any other consideration therefore.

**Sec. 26-67 Reference to Chief of Police, City Clerk, City Health Officer.**

Any reference in this Article to the Chief of Police, City Clerk or City Health Officer, shall include those persons, designees and any individuals designated by the City Manager.

**Sec. 26-68 License Required/Fees.**

Except as otherwise provided in the Article, no person, firm, partnership, association, corporation, trust, or other type of entity or organization, or individual shall operate a massage establishment, or perform massage therapy without having first obtained the required licenses/permits from the City Clerk. The fee for such licenses/permits shall be prescribed in Appendix F and are not prorated, refundable or transferable. Any application made, fees paid, and licenses obtained under

the provision of this Article shall be in addition to and not in lieu of any other fees, permits or licenses required to be paid or obtained under any other ordinance of the City. Such license shall be valid from January 1 to December 31 of each calendar year.

**Sec. 26-69 Identification Cards.**

All massage therapy establishment owners, establishment representatives, and massage therapists issued a license pursuant to the provisions of this Article shall, at all times when working in an establishment or providing any massage service regulated by the Article, have in their possession a valid identification card issued by the City to include the massage therapist's license number, physical description and photograph. Such identification cards shall be laminated to prevent alteration. All persons granted licenses under this Article shall at all times keep their licenses available for inspection upon request of any person who by law may inspect same. All licensees shall, when conducting massage therapy off their business premises, wear on their clothing in a conspicuous location their identification card.

**Sec. 26-70 Restriction of Business to Premises.**

- (a) All massage therapy provided for under this Article shall be conducted on the business premises of a licensed massage therapy establishment; provided, that in-clients' office massage and in-clients' home/hotel massage may be conducted under the following conditions:
  - (1) If done at the direction of a licensed healing arts practitioner;
  - (2) If done at the written request of a person, who shall have provided the name and address of the requesting person and the date and time of the service. When in-clients' office massage or in-clients' home/hotel massage is offered, whether by telephone, in person or in writing, the person offering such service must state clearly that he or she is a licensed massage therapist or that the service will be performed by a licensed massage therapist, and that prior to any service being provided the person requesting the service will be required to sign a form requesting the service. All such written requests shall be kept by the licensed massage therapy establishment or the licensed massage therapist, as the case may be, for a period of one (1) year and shall be produced for inspection when requested by the Chief of Police, City Clerk or City Health Inspector.
  - (3) In-clients' office massage and in-clients' home/hotel massage shall not be conducted between the hours of 12:00 a.m. and 6:00 a.m.
- (b) Licensed massage therapy establishments shall be operated only from commercial business premises, or as a Home Occupation by Special Use Permit as allowed in the Development Regulations of the City upon review and recommendation of the Planning Commission and approved by the Governing Body.
- (c) A Home-Office Massage business shall be allowed to operate in or from residential property without a Special Use Permit with the restriction that no massage therapy shall

take place on the premises. A Massage Therapy Business License shall be required. No inspections are required for Home Office massage businesses.

- (d) In-clients' home/hotel massage is only permitted in the guest rooms of hotels and bed and breakfast establishments upon written approval of the hotel and bed and breakfast owner(s) and/or manager(s).

**Sec. 26-71 Exceptions.**

The provisions of this Article shall not apply to hospitals, nursing homes, sanitariums, or persons holding an unrevoked certificate to practice the healing arts, persons licensed to practice as a registered professional nurse under the laws of the State of Kansas, persons licensed to practice as a physical therapist under the laws of the State of Kansas, or persons working under the direction and supervision of any licensed healing arts practitioner or in any such establishment, nor shall this Article apply to barbers or cosmetologists lawfully carrying out their particular profession or business and holding a valid, unrevoked license or certificate or registration issued by the State of Kansas.

**Sec. 26-72 - 26-85 Reserved.**

**DIVISION 2 - MASSAGE THERAPY ESTABLISHMENTS**

**Sec. 26-86 License Required.**

No person, firm, partnership, association, corporation, trust, or other type of entity or organization shall operate a massage establishment, as defined herein, whether from business premises or as a Home Occupation, without first having obtained a business license therefor, issued by the City Clerk of this City. It is unlawful to conduct such a business unless the license issued is current, unrevoked and not suspended. A separate license shall be required for each and every separate place of business/massage establishment conducted by any one licensee. Such license shall be valid from January 1 to December 31 of each calendar year.

**Sec. 26-87 Application for Massage Therapy Establishment License; Fees.**

Every application for a business license to maintain, operate or conduct any establishment covered by this Article shall file an application with the City Clerk and pay (i) an annual fee, as prescribed in Appendix F, which shall not be prorated, refundable or transferable, and (ii) an annual renewal fee as prescribed in Appendix F, which shall not be prorated, refundable or transferable.

The application for a license to operate any such establishment shall set forth the exact nature of the services to be provided, the proposed place of business and facilities, and the name, address, and telephone number of each applicant.

In addition, any applicant for a business license shall furnish the following information:

- (a) Written proof that the applicants and any establishment representatives are at least 18 years old.

- (b) Copy of a valid government issued identification card.
- (c) Fingerprints provided for new applications and applications that have lapsed for one (1) year or more. Not required for annual renewals.
- (d) The business, occupation or employment locations and contact information for each applicant and establishment representative for the three (3) years immediately prior to the date of application.
- (e) The massage therapy business license history of applicant and establishment representatives; whether such person, in previously operating in the City or another city or State under an establishment or therapist license, has had such license revoked or suspended, the reason therefore, and the business activity or occupation subsequent to such suspension or revocation.
- (f) Any criminal convictions, except minor traffic violations, fully disclosing the jurisdiction in which convicted and the offense for which convicted and circumstances thereof.
- (g) In the case of establishment applicants who intend to also provide massage therapy themselves, the applicants must also apply for and receive a massage therapist license as provided in this Article.
- (h) Authorization for the City, its agents and employees to obtain consumer reports, credit checks, or such other background checks as may be permitted under applicable law, at any time after receipt of such authorization.
- (i) Applicants for renewal of an existing license need only provide that information or documentation necessary to insure up-to-date renewal application processing.

**Sec. 26-88     Massage Therapy Establishment License Application Processing.**

Upon receipt of a complete application for a massage therapy establishment license, the City Clerk and or Chief of Police shall initiate a background check. In addition, the City Clerk shall transmit a copy of the application to the City Health Officer, as applicable. It shall be the duty of the City Clerk and/or Chief of Police to investigate such application to determine whether the information contained in the application is accurate and whether the applicant is qualified to be issued the license. It shall be the duty of the City Health Officer to determine whether the establishment premises meets the requirement of this Article. The City Clerk shall verify that all zoning requirements are met. All standards for premises set forth in Sec. 26-89 must be met prior to the first day the establishment opens for business. The City Health Officer shall report the results of his/her investigation to the City Clerk not later than ten (10) working days from the date the application is received by the City Clerk. Upon receipt of the reports regarding the background check, and approval by the City Health Officer, the City Clerk shall issue the applicable license. All license applications shall be approved or disapproved within 45 days from the date filed with the City Clerk's office.

**Sec. 26-89     Inspection Necessary**

No business shall be conducted on licensed premises until an inspection by the City Health Officer reveals that the establishment complies with each of the following minimum requirements:

- (a) The walls shall be clean and painted with washable, mold-resistant paint in all rooms where water or steam baths are given. Floors shall be free from any accumulation of dust, dirt or refuse. All equipment used in the business's operation shall be maintained in a clean and sanitary condition. Towels, linen, and items for personal use of operators and patrons shall be clean and freshly laundered. Towels, cloths and sheets shall not be used for more than one patron. Heavy white paper may be substituted for sheets provided that such paper is changed for every patron. No service or practice shall be carried on within any cubicle, room, booth, or any area within any permitted establishment, which is fitted with a door that can be locked.
- (b) Toilet facilities shall be provided in convenient locations. When five (5) or more massage establishment employees and patrons of different sexes are on the premises at the same time, separate toilet facilities shall be provided.
- (c) Lavatories or washbasins provided with both hot and cold water shall be installed in either the toilet room or a vestibule. Lavatories or washbasins shall be provided with soap in a dispenser and with sanitary towels.
- (d) At least one water fountain, water cooler, or bottled water shall be provided but shall not be located in toilet rooms or bathrooms.

The City Health Inspector shall certify that the proposed business establishment complies with all of the requirements of this Section and shall give or send such certification to the City Clerk and Chief of Police. Provided, however, that nothing contained herein shall be construed to eliminate other requirements of statutes or ordinances that relates to the maintenance of premises, not to preclude authorized inspection thereof.

**Sec. 26-90 Issuance of Massage Therapy Establishment License.**

After the filing of an application in the proper form, the City Clerk shall examine the application and after such examination, shall approve the issuance of the license for a massage therapy establishment, unless the City Clerk finds that:

- (a) The establishment operations, as proposed by the applicant, if permitted, would not comply with all applicable laws to include, but not limited to, the City's building, zoning and health regulations;
- (b) Each individual owner applicant (if applying as an individual or a group or individuals), or each stockholder/member who owns or holds ten percent (10%) or more of the equitable interests in any applicant that is a corporation, limited liability company, partnership, or other entity that applies in the name of such entity, or any establishment representative principally in charge of the operation of the business, has been convicted of, or received a diversion on:
  - (1) A person felony, as defined by Kansas law;

- (2) A non-person felony, as defined by Kansas law, in the seven (7) years immediately preceding the date of the application;
  - (3) Any felony or misdemeanor offense involving sexual misconduct;
  - (4) Obscenity;
  - (5) Prostitution or Promoting prostitution or equivalent charge;
  - (6) Solicitation of a lewd or unlawful act, as either a felony or misdemeanor;
  - (7) Pandering or other sexually related offenses;
  - (8) Any violation of the law applicable to massage therapy arising out of the individual's prior massage establishment(s) or individual massage therapist license(s) in the seven (7) years preceding the date of the application.
- (c) The applicant made any false, misleading or fraudulent statement of fact in the license application or in any document required by the City in conjunction therewith;
  - (d) The applicant or establishment representative has had a massage therapy establishment license, massage therapy license, or other similar permit or license denied, revoked, suspended or has voluntarily surrendered the permit or license in lieu of revocation or suspension for any of the above causes by the City or any other city, State, or local agency within seven (7) years prior to the date of the application;
  - (e) Any establishment applicant or establishment representative has previously been issued a license for an adult entertainment business or escort service or has been employed by any such business;
  - (f) Each individual owner applicant (if applying as an individual or a group or individuals), or each stockholder/member who owns or holds ten percent (10%) or more of the equitable interests in any applicant that is a corporation, limited liability company, partnership, or other entity that applies in the name of such entity, or any establishment representative principally in charge of the operation of the business, has not attained the age of 18 years; and
  - (g) The manager, establishment representative, or other person principally in charge of the operation of the business would be ineligible to receive any license under the provisions of this Article.

The license shall state that it is not transferrable or refundable. The license shall be kept posted in an open and conspicuous place on the premises of the licensee. If an application is denied, the applicant shall be immediately notified by certified mail, return receipt requested, mailed to the last known mailing address of the applicant, and the notice shall state the basis for the disapproval.

**Sec. 26-91 Inspection, Immediate Right of Entry.**

The Police Department and City Health Inspector may from time to time make an inspection of each licensed establishment in the City, to include those locations where an establishment conducts its business and areas where a therapist performs massage therapy, to determine that the provisions of this Article are complied with. Such inspections shall be made at reasonable times and in a reasonable manner. It shall be unlawful for any licensee, manager or representative to fail to allow such inspection officer immediate access to the premises or to hinder such officer in any manner. Provided further, that any failure on the part of any licensee, manager or representative to grant immediate access to such inspector shall be grounds for the revocation or suspension of any massage establishment license or massage therapy license.

#### **Sec. 26-92     Operation Regulations.**

The operation of any massage therapy establishment, to include the provision of service by massage therapists, shall be subject to the following regulations:

- (a) *Hours.* Such business shall be closed and operations shall cease between the hours of 12:00 a.m. and 6:00 a.m. each day; provided the hours of operation for in-clients' office massage may be extended for in-office therapy conducted on premises with established evening and night shifts.
- (b) *Alcoholic beverages.* No alcoholic beverage or cereal malt beverages, nor the consumption thereof, shall be allowed, permitted or suffered to be done in or upon any premises licensed under the provisions of this Article or during in-clients' office massage therapy. This restriction shall not apply to establishments operating as Home Occupations under the Development Regulations; provided, that no alcohol is permitted in that portion of such premises where massage therapy occurs. As used in this Section, "that portion" shall mean physical, visual and audible separation by permanently installed walls and doors between the area where massage therapy occurs and the area where alcoholic beverages or cereal malt beverages are stored or consumed.
- (c) *Conduct of premises.* All licensees licensed under the provisions of this Article shall at all times be responsible for the conduct of business on their licensed premises and for any act or conduct of his or her employees which constitutes a violation of the provisions of this Article. Any violation of the City, State, or federal laws committed on the licensed premises by any such licensee or employee affecting the eligibility or suitability of such person to hold a license or may be grounds for suspension or revocation of same.
- (d) Every portion of a licensed establishment to include appliances and personnel shall be kept clean and operated in a sanitary condition.
- (e) All licensed employees and massage therapists must be modestly attired. Diaphanous or transparent clothing is prohibited. Clothing must, at all times, cover the chest of the licensee, employees and/or massage therapists.
- (f) The private parts of patrons must be covered by towels, cloths or undergarments when in the presence of an employee or massage therapist. Any contact with a patron's genital area is prohibited.



- (g) All licensed establishments, when applicable, shall provide clean, laundered sheets and towels in sufficient quantity and such items shall be laundered after each use thereof and stored in a sanitary manner.
- (h) Wet and dry heat rooms, shower compartments and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs or individual soak areas shall be thoroughly cleaned after each use.
- (i) Table showers are strictly prohibited.
- (j) No individual shall reside, inhabit or otherwise sleep overnight at an establishment with the exception of the licensee who operates an establishment in his/her home or residence as a permitted Home Occupation, but shall not reside, inhabit or sleep in the portion of the home or residence devoted to the practice of massage therapy.

**Sec. 26-93 Supervision.**

A licensee shall have the establishment premises supervised at all times when open for business. The establishment licensee or a person employed as a massage therapist shall personally supervise the business and shall not violate or permit others to violate any applicable provision of this Article. The violation of any such provision by any establishment representative shall constitute a violation by the employee.

**Sec. 26-94 Employee and Patron Register.**

- (a) All establishments, commercial, in-home and home-office, licensed under the provisions of this Article shall keep and maintain on their premises a current register of all their establishment representatives and list such representatives' names, addresses and license numbers. Such register shall be open to inspection at all reasonable times by the City Health Officer or member of the Police Department.
- (b) Every person who engages in or conducts a licensed establishment shall keep a daily register of services provided and all patrons, with names, addresses, and hours of arrival and, if applicable, the rooms or cubicles assigned. Said daily register shall, at all times during business hours, be subject to inspection by City officials and by the Police Department and shall be kept on file for one (1) year.

**Sec. 26-95 Persons Under Age 18 Prohibited Services.**

No licensee shall perform or permit any massage therapy to be provided to a person under the age of 18, provided a person under the age of 18 may utilize or receive massage therapy from a licensed massage therapist if accompanied by a parent or legal guardian and a parent or legal guardian authorized such therapy in writing.

**Sec. 26-96 Advertising.**

No establishment granted a license under provision of this Article shall place, publish or distribute or cause to be placed, published or distributed any advertising matter that depicts any portion of a

human body that would reasonably suggest to prospective patrons that any service is available other than those services as described in Sec. 26-66, or that employees or massage therapists are dressed in a manner other than described in Sec. 26-92.

**Sec. 26-97 Application of Existing Businesses.**

The operators of any existing massage therapy establishment must comply with all provisions of this Article, subject to the education and experience requirements set for the in Sec. 26-131.

**Sec. 21-98 Revocation or Suspension of Business License.**

- (a) Any business license issued for a massage therapy establishment may be suspended or revoked by the City Clerk or Chief of Police for a violation of any of the provisions of this Article or the licensee or any establishment representative was convicted of any offense which would make them ineligible to receive a license; or in any case, in which the licensee or an establishment representative refused to permit, or hindered any City representative to conduct any investigation or inspection provided for this Article.
  
- (b) Written notice shall be sent to the person entitled to notice as stated in the business license and at the location specified in the license for notice. This notice shall state the specific basis for suspension or revocation and shall notify the licensee of the licensee's right to a hearing before the City Manager to appeal the suspension or revocation. Any of the following shall establish a sufficient basis for suspension or revocation of the business license, if a licensee or any of its establishment representatives:
  - (1) Is convicted of any offense which is a felony, the record of conviction being conclusive evidence thereof;
  - (2) Supplies false information to the permit administrator or Police on the application for license or licensure renewal;
  - (3) Allows the use of his or her establishment by an unlicensed person;
  - (4) Violates any zoning, building or fire prevention ordinance;
  - (5) Uses fraudulent, false, misleading or deceptive advertising to describe, promote or advertise any type of business activity or service which is expressly not massage therapy or has otherwise fraudulently engaged in massage therapy;
  - (6) Has been convicted, to include a massage therapist, of any offense found in Sec. 26-98 and Sec. 26-133 herein and the licensee has actual or constructive knowledge of the violation or conviction;
  - (7) Conducts any illegal activities or allows them to be conducted by anyone else;
  - (8) Has an arrest record for any sexual offense or violation;
  - (9) Has fraudulently obtained a license pursuant to the provisions of this ordinance;

- (10) Has ceased to meet any of the requirements for issuance of a massage therapy license or massage therapy establishment license;
  - (11) Refused to permit any duly authorized police officer or City Health Officer to inspect the premises or operations of the licensee;
  - (12) Fails to comply with all applicable laws and regulatory provisions herein.
- (c) *Business Closed and Posted.* Upon suspension or revocation of the business license, the business shall cease to operate and the Chief of Police or City Clerk shall post the business as closed.

**Sec. 26-99 Appeal.**

Upon receipt of a written request delivered to the City Clerk, an appeal of the denial, suspension or revocation shall be heard by the City Manager within thirty (30) days of the suspension or revocation. The licensee may submit evidence at the hearing which is relevant and material to the specific basis for suspension or revocation. The City Manager shall make a final determination as to denial, suspension or revocation.

**Sec. 26-100 - 26-130 Reserved.**

**DIVISION 3 – MASSAGE THERAPISTS**

**Sec. 26-131 Massage Therapist License Required Categories, Educational Requirement, Renewal & Restrictions.**

No person shall perform massage therapy, in-client's home massage or in-clients' office massage therapy within the City, unless he or she has a valid massage therapist license issued by the City pursuant to the provision of this Article. It is unlawful to perform such services unless the license issued is current, unrevoked and not suspended. Such license is not transferable or refundable and shall be valid from January 1 to December 31 of each calendar year.

The massage therapist license and educational requirement shall be as follows:

- (a) Successful completion of a course of instruction of not less than 500 hours, in theory, method or practice of massage from one or more accredited schools. All practical and/or modality instruction must be completed as in-class/hands-on instruction, while theory instruction may be completed online.
- (b) Proof of completion of education and training requirements must be by certified transcripts. The educational training requirements required by the Article may be received from more than one school. One (1) hour of instruction is defined as fifty minutes of actual instructional time.
- (c) Individuals licensed with the City as a Massage Therapist and holding a 2018 massage license may renew that license notwithstanding an inability or failure to satisfy the minimum education requirements set forth above in Sec. 26-131(a), and continue to renew

such license as long as there are no lapses in active licensure and the individual continues to satisfy all other requirements of this Article.

**Sec. 26-132 Application for Massage Therapist License, Fees.**

- (a) Any person who desires to perform or provide massage therapy in-client's home massage; in-clients' office massage therapy; or to perform any massage services in a massage therapy establishment, as defined therein, shall file a written application with the City Clerk and pay a fee as prescribed in Appendix F, which shall not be prorated, refundable or transferable and an annual renewal fee as prescribed in Appendix F. A massage therapy license shall be valid from January 1 to December 31 of each calendar year.
- (b) Only one massage therapy license shall be required for a massage therapist regardless of the number of location types where he/she intends to practice – in an establishment, in-clients' office and/or in-clients' home.
- (c) A Massage therapist shall notify the City of any change in employment within thirty (30) calendar days of the change to include a change in the therapist's employer or the addition or reduction of licensed establishments in which he or she performs massage therapy.
- (d) Massage therapists who themselves, individually, own and operate a licensed massage establishment, and apply for a personal massage therapist license of any type, are exempt from paying the separate massage therapist license fee.
- (e) The application for a massage therapist license shall contain the following:
  - (1) Name, address and telephone number.
  - (2) Three (3) portrait photographs at least two (2) inches by two (2) inches.
  - (3) Copy of a valid government issued identification card.
  - (4) Applicant's weight, height, color of hair and eyes.
  - (5) Fingerprints provided for new applications and applications that have lapsed for one (1) year or more. Not required for annual renewals.
  - (6) Written evidence that the applicant is at least 18 years old.
  - (7) Business, occupation or employment of the applicant for the three (3) years immediately prior to the date of application.
  - (8) Disclosure of any criminal convictions or diversions, except minor traffic violations, and fully disclose the jurisdiction in which convicted or diverted and the offense for which convicted or diverted.

- (9) Authorization for the City, its agents and employees to obtain consumer reports, credit checks, or such other background checks as may be permitted under applicable law, at any time after receipt of such authorization.
- (10) Proof of the education and experience requirements set forth in Sec. 26-131.
- (11) History of the applicant, whether such person, in operation in Kansas or another state under an establishment license, a therapist license or under another name had such license revoked or suspended and the reason therefor.

**Sec. 26-133 Application Process and Issuance of Massage Therapist License and Identification Card.**

Upon receipt of a complete application for a massage therapist license, the City Clerk and or Chief of Police shall initiate a background check. The City Clerk shall issue a massage therapist license and identification card within 21 days following application unless there are findings that:

- (a) The applicant for the massage therapist license has been convicted of, or diverted on:
  - (1) A person felony, as defined by Kansas Law;
  - (2) A non-person felony, as defined by Kansas Law, in the seven (7) years immediately preceding the date of the application;
  - (3) Any felony or misdemeanor offense involving sexual misconduct;
  - (4) Obscenity;
  - (5) Prostitution or Promoting prostitution or equivalent charge;
  - (6) Solicitation of a lewd or unlawful act, as either a felony or misdemeanor;
  - (7) Pandering or other sexually related offense;
  - (8) Any violation of the law applicable to massage therapy arising out of the individual's prior massage establishment(s) or individual massage therapist license(s) in the seven (7) years preceding the date of the application.
- (b) The applicant has knowingly made any false, misleading, or fraudulent statement of fact in the license application or in any document required by the City in conjunction therewith;
- (c) The applicant had a massage establishment or therapist permit or license denied, revoked, suspended, or involuntarily surrendered the permit or license in lieu of revocation or suspension by the City or any other state or local agency within seven (7) years prior to the date of application.
- (d) The applicant was issued a license for an adult entertainment business or escort service or was employed by any such establishment within seven (7) years prior to the date of application.

- (e) The applicant has not attained the age of 18 years.
- (f) The correct license fee has not been tendered to the City, and in the case of a check or bank draft, not honored with payment upon presentation;
- (g) That the applicant has not successfully completed the education standards required under the provisions of this Article.

The license and identification card shall state that they are not transferable or refundable. The license and identification card shall be displayed and/or made available in Sec. 26-69. If an application is denied, the applicant shall be immediately notified by certified mail, return receipt requested, mailed to the last known mailing address of the applicant, and the notice shall state the basis for the disapproval. Appeals shall be in accordance with Sec. 26-135.

**Sec. 26-134 Revocation of Massage Therapist License.**

- (a) Any massage therapist license may be suspended or revoked by the City Clerk or Chief of Police (i) for a violation of any of the provisions of this Article, (ii) if the licensee or any establishment representative was convicted of any offense which would make him or her ineligible to receive a license, or (iii) if the licensee or an establishment representative refused to permit, or hindered any authorized City inspector or representative to conduct any investigation or inspection provided for in this Article.
- (b) Written notice shall be sent to the person entitled to notice as stated in the massage therapist license and at the location specified in the license for notice. This notice shall state the specific basis for suspension or revocation and shall notify the licensee of the licensee's right to a hearing before the City Manager to appeal the suspension or revocation. Any of the following shall establish a sufficient basis for suspension or revocation of the massage therapist license, if a licensee:
  - (1) Is convicted of any offense which is a felony, the record of conviction being conclusive evidence thereof;
  - (2) Supplies false information to the permit administrator or Police on the application for licensure or licensure renewal;
  - (3) Uses fraudulent, false, misleading or deceptive advertising to describe, promote or advertise any type of business activity or service which is expressly not massage therapy or has otherwise fraudulently engaged in massage therapy;
  - (4) Is convicted of any offense found in this Article;
  - (5) Conducts any illegal activities;
  - (6) Has an arrest record for any sexual offense or violation;
  - (7) Has fraudulently obtained a license pursuant to provision of this Article;

- (8) Has ceased to meet any of the requirements for issuance of a massage therapy license;
  - (9) Refuses to permit any duly authorized police officer or City Health Officer to inspect the records of the operations of the licensee;
  - (10) Fails to comply with all applicable laws and regulatory provisions herein.
- (c) Upon suspension or revocation of the massage therapist license, the massage therapist shall cease to operate in the City of Leavenworth.

**Sec. 26-135 Appeal.**

Upon receipt of a written request delivered to the City Clerk, an appeal of the denial, suspension or revocation of a massage therapist license shall be heard by the City Manager within thirty (30) days after the denial, suspension or revocation. The licensee may submit evidence at the hearing which is relevant and material to the specific basis for suspension or revocation. The City Manager shall make a final determination as to suspension or revocation.

**Sec. 26-136 Severability.**

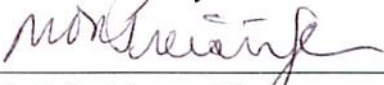
In the event that any portion or section of this Article is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, the decision shall in no manner affect the remaining portions or sections of this Article, which shall remain in full force and effect.

**Sec. 26-137 - 26-175 Reserved.**

**Section 2. REPEAL.** Chapter 26, Businesses, Article III, Massage Therapy, of the Code of Ordinances of the City of Leavenworth, Kansas, in existence as of and prior to the adoption of this ordinance, are hereby repealed.


**Section 3: EFFECTIVE DATE.** This Ordinance shall take effect and be in force from and after the date of its publication in the official city newspaper.

**PASSED and APPROVED** by the Governing Body on this 11th day of December 2018.

  
\_\_\_\_\_  
Mark Preisinger, Mayor

{Seal}

ATTEST:

  
\_\_\_\_\_  
Carla K. Williamson, CMC, City Clerk

