



CITY of NOVI CITY COUNCIL

**Agenda Item 5
July 21, 2014**

SUBJECT: Approval of Ordinance Amendment 14-120.12 to amend the City of Novi Code of Ordinances, at Chapter 20, "Massage", Article I, "In General", and Article III, "Massage Therapist Permit", in order to remove the requirement for a city-issued individual Massage Therapist Permit as a result of state preemption of such requirement. **FIRST READING**

SUBMITTING DEPARTMENT: City Clerk *[Signature]*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

Public Act 471 of 2008 established licensure requirements for massage therapists in the state of Michigan. On November 29, 2012, the administrative rules that implement the licensure requirements were filed with the Office of the Great Seal and took effect immediately. Under Section 17967 of the law, local units of government are not allowed to establish or maintain licensing requirements for a massage therapist beginning one year after the certification of administrative rules. As of November 29, 2013 the City of Novi ended the enforcement of Chapter 20, Article III "Massage Therapist Permit" of the City Code.

The City still retains the right to license and enforce the Massage Business Licensing under Chapter 20, Article II "Business License".

The Ordinance Review Committee met on July 7, 2014 and made a positive recommendation to City Council to move forward with the removal of Massage Therapist references within Chapter 20 as put forth in the ordinance amendment.

RECOMMENDED ACTION: Approval of Ordinance Amendment 14-120.12 to amend the City of Novi Code of Ordinances, at Chapter 20, "Massage", Article I, "In General", and Article III, "Massage Therapist Permit", in order to remove the requirement for a city-issued individual Massage Therapist Permit as a result of state preemption of such requirement. **FIRST READING**

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Casey				
Council Member Fischer				

	1	2	Y	N
Council Member Markham				
Council Member Mutch				
Council Member Wrobel				

STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF NOVI

ORDINANCE NO. 14-_____

AN ORDINANCE TO AMEND THE CITY OF NOVI CODE OF ORDINANCES, AT CHAPTER 20, "MASSAGE," ARTICLE I, "IN GENERAL," AND ARTICLE III, "MASSAGE THERAPIST PERMIT," IN ORDER TO REMOVE THE REQUIREMENT FOR A CITY-ISSUED INDIVIDUAL MASSAGE THERAPIST PERMIT AS A RESULT OF STATE PREEMPTION OF SUCH REQUIREMENT.

THE CITY OF NOVI ORDAINS:

PART I. That Chapter 20, "Massage," Article I, "In General," Section 20-3, "Register of Employees," of the City of Novi Code of Ordinances is hereby amended to read as follows in its entirety:

Sec. 20-3. Register of employees.

The licensee or person designated by the licensee of a massage establishment shall maintain a register of all persons employed at any time as massage therapist and their State of Michigan permit numbers. Such register shall be available at the massage establishment to representatives of the city during regular business hours.

PART II. That Chapter 20, "Massage," Article I, "Business License," Section 20-8, "Massage therapist required to have permit," of the City of Novi Code of Ordinances is hereby amended to read as follows in its entirety:

Sec. 20-8. Massage therapist required to have permit.

No person shall employ as a massage therapist any person unless the employee has obtained and has in effect a permit to practice massage or massage therapy issued ~~pursuant to this chapter or~~ pursuant to the laws of the State of Michigan, including the Public Health Code, 1978 PA 368, as amended.

PART III. That Chapter 20, "Massage," Article III, "Massage Therapist Permit," of the City of Novi Code of Ordinances is hereby deleted in its entirety.

~~Sec. 20-51. Required.~~

~~No person shall practice massage as a massage therapist, employee or otherwise, unless he has secured a valid and subsisting massage therapist's permit issued to him by the city pursuant to the provisions of this article.~~

Sec. 20-52. Application.

~~Application for a massage therapist's business permit shall be made to the city clerk by the holder of the establishment license as set forth in article II and shall be made at the same time and in the same manner as provided therein, except where the massage therapist is not employed by the establishment at the time of its annual application, in which case the application shall be made and a massage therapist's license secured before the massage therapist may engage in any activity regulated under this chapter, and shall be accompanied by the annual nonrefundable massage therapist's permit fee as set from time to time by resolution of the council. The application shall contain but not be limited to the following:~~

- ~~(1) The business address and all telephone numbers where the massage is to be practiced;~~
- ~~(2) Name and residence address, and all names, nicknames and aliases by which the applicant has been known, including the two (2) previous addresses immediately prior to the present address of the applicant;~~
- ~~(3) Social Security number, driver's license number, if any, and date of birth;~~
- ~~(4) Applicant's weight, height, color of hair and eyes, and sex;~~
- ~~(5) Written evidence that the applicant is at least eighteen (18) years of age;~~
- ~~(6) A complete statement of all convictions of the applicant for any felony or misdemeanor or violation of a local ordinance, except misdemeanor traffic violations;~~
- ~~(7) A complete set of the applicant's fingerprints which shall be taken by the city police department. The city police department shall collect from the applicant at the time said fingerprints are taken such applicable fingerprinting processing fees, as dictated by the state police department. The city police department shall thereafter forward said fingerprints and the applicable fingerprinting processing fee to the state police department;~~
- ~~(8) Two (2) recent front face portrait photographs at least two (2) inches by two (2) inches in size;~~
- ~~(9) The name and address of the recognized school attended, the dates attended and a copy of the diploma or certificate of graduation awarded the applicant showing the applicant has completed not less than five hundred (500) hours of instruction;~~
- ~~(10) Proof of current basic certification by International Myomassethics Federation (IMF), the American Massage Therapy Association (AMTA), the Associated Bodywork and Massage Professionals (ABMP), or other national massage therapy organization with comparable certification requirements;~~
- ~~(11) The massage or similar business history and experience ten (10) years prior to the date of application, including but not limited to whether or not such person in previously operating in this or another city or state under license or permit has had such license or permit denied, revoked, or suspended and the reasons therefore, and the business activities or occupations subsequent to such action of denial, suspension or revocation;~~
- ~~(12) The names, current addresses and written statements of at least five (5) bona fide permanent residents other than relatives, of the United States~~

~~that the applicant is of good moral character. If the applicant is able, the statement must first be furnished from residents of the city, then the county, then the state and lastly from the rest of the United States;~~

- ~~(13) A medical certificate signed by a physician licensed to practice in the state within thirty (30) days of the date of the application stating that the applicant was examined by the certifying physician and that the applicant is free of communicable disease. The additional information required by this subsection shall be provided at the applicant's expense;~~
- ~~(14) Such other information, identification and physical examination of the person deemed necessary by the police chief in order to discover the truth of the matters required by this section to be set forth in the application;~~
- ~~(15) Authorization for the city, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the permit;~~
- ~~(16) Written declaration by the applicant, under penalty or perjury that the foregoing information contained in the application is true and correct, such declaration being duly dated and signed in the city.~~

Sec. 20-53. Waiver of educational requirement:

~~The city shall waive the requirements of subsection 20-52(9) if the applicant furnishes satisfactory evidence that he attended not less than five hundred (500) hours of instruction in a school within or without this state or in any foreign country that provides education substantially equal to or in excess of the educational requirements of this article.~~

Sec. 20-54. Grounds for denial:

~~The city shall issue a permit for a massage therapist, after determination by the city clerk that requirements for a massage therapist permit described by this article are met unless it finds:~~

- ~~(1) The correct permit fee has not been tendered to the city and, in the case of a check, or bank draft, honored with payment upon presentation;~~
- ~~(2) The applicant has been convicted of any of the following offenses or convicted of an offense outside the state that would have constituted any of the following offenses if committed within the state:
 - ~~a. An offense involving the use of force and violence upon the person of another that amounts to a felony;~~
 - ~~b. An offense involving sexual misconduct;~~
 - ~~c. An offense involving narcotics, dangerous drugs or dangerous weapons that amounts to a felony.~~~~

~~The city may issue a permit to any person convicted of any of the crimes described in subsection (2) of this section if it finds that such conviction occurred at least five (5) years prior to the date of the application and the applicant has had no subsequent felony convictions of any nature and no subsequent misdemeanor convictions for crime mentioned in this section;~~

- ~~(3) The applicant has knowingly made any false, misleading, or fraudulent statement of fact in the permit application or in any document required by the city in conjunction therewith;~~

- ~~(4) — The applicant has had a massage business, massage therapist, or other similar permit or license denied, revoked, or suspended by the city or any other state or local agency within five (5) years prior to the date of the application;~~
- ~~(5) — The applicant is not over the age of eighteen (18) years.~~

~~Sec. 20-55. Approval or denial of application.~~

~~The city shall act to approve or deny an application for a permit under this article within a reasonable period of time and in no event shall the city act to approve or deny the permit later than ninety (90) days from the date that the application was accepted by the city clerk.~~

~~Sec. 20-56. Posting.~~

~~Every massage therapist shall post the permit required by this article in his work area.~~

~~Sec. 20-57. Transferability.~~

~~No permit shall be transferable except with the consent of the city and ratified by approval of the city clerk. An application for such transfer shall be in writing and shall be accompanied by the fee required in section 20-52. The written application for such transfer shall contain the same information as requested in this article for initial application for the permit.~~

~~Sec. 20-58. Expiration.~~

~~Every permit issued pursuant to this article will terminate December 31 of each year unless sooner suspended or revoked.~~

~~Sec. 20-59. Revocation.~~

~~A massage therapist permit issued by the city clerk shall be revoked or suspended where it appears that the massage therapist has been convicted of any offense which would be cause for denial of a permit upon an original application, has made a false statement on an application for a permit, or has committed an act in violation of this chapter. Such revocation proceedings shall be held by the city manager within a reasonable time after notice of time and place of hearing and notice of cause for revocation.~~

~~Sec. 20-60. Preemption; exemption.~~

~~The requirements of this article II relating to the issuance of a permit for a massage therapist shall not apply to an individual licensed as a massage therapist, as defined herein, under the laws of the state, including the Public Health Code, 1978 PA 368, as amended, to the extent such law expressly preempts this article. However, for each such individual employed by a licensee hereunder in a massage establishment as defined herein, the licensee shall provide to the city clerk:~~

- ~~(1) — The name and address of each massage therapist who is or will be employed in the establishment;~~
- ~~(2) — A copy of the license issued to each such massage therapist; and~~
- ~~(3) — A copy of the driver's license or other proof of identification for the massage therapist.~~

PART IV. Severability. Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

PART V. Savings Clause. The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

PART VI. Repealer. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

PART VII. Effective Date. The provisions of this Ordinance are ordered to take effect following publication in the manner prescribed by the Charter of the City of Novi.

PART VIII. Adoption. This ordinance is hereby declared to have been adopted by the Novi City Council in a meeting thereof duly held and called on the ___ day of _____, 2014, in order to be given publication in the manner prescribed by the Charter of the City of Novi.

Moved by _____ and supported by _____.

Robert J. Gatt, Mayor

Maryanne Cornelius, City Clerk

Certificate of Adoption

I hereby certify that the foregoing is a true and complete copy of the ordinance adopted at the regular meeting of the Novi City Council held on the ___ day of _____, 2014.

Maryanne Cornelius, City Clerk