



CITY OF NOVI CITY COUNCIL
OCTOBER 7, 2019

SUBJECT: Approval of Ordinance 19-120.13, an ordinance to amend the City of Novi Code of Ordinances, Chapter 20, "Massages," in order to amend certain sections to update the regulations of massage establishments within the City. **SECOND READING**

SUBMITTING DEPARTMENT City Clerk

BACKGROUND INFORMATION: In light of some recent massage business permit applications and license denials, as well as police investigations, the Ordinance Review Committee (ORC) of the City Council was asked to look at some revisions to the City's Massage Ordinance. The attached draft ordinance amendment does the following:

- Adds a provision expressly prohibiting anyone from sleeping overnight in the establishment
- Amends the list of information to be submitted to the City Clerk with the application (to better reflect what information exists and can be processed by the Clerk)
- Clarifies and expands upon the standards for grant or denial of a license by the City Clerk
- Addresses when operations shall cease if a license is denied or revoked
- Establishes a right of appeal to the City Council (which may appoint a hearing officer to conduct a hearing and make a recommendation to the Council)

The ORC reviewed the draft ordinance and, after making some recommendations regarding the standards for grant or denial, approved submission of the ordinance to the Council for first reading. Concurrently, the ORC requested that Planning staff review current zoning as well as the Special Land Use Permit criteria and process. As that review has not yet been completed, this draft does not reflect any proposed zoning or Special Land Use Permit changes.

This draft includes a minor change to the identification requirements.

RECOMMENDED ACTION: Approval of Ordinance 19-120.13, an ordinance to amend the City Of Novi Code Of Ordinances, Chapter 20, "Massages," in order to amend certain sections to update the regulations of massage establishments within the City. **SECOND READING**

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 19--120.13

AN ORDINANCE TO AMEND THE CITY OF NOVI CODE OF ORDINANCES CHAPTER 20, "MASSAGES," IN ORDER TO AMEND CERTAIN SECTIONS TO UPDATE THE REGULATIONS OF MESSAGE ESTABLISHMENTS WITHIN THE CITY.

THE CITY OF NOVI ORDAINS:

PART I. The following Sections of Chapter 20, "Massages," are amended to read as follows in their entirety, with the remainder of Chapter 20 remaining unchanged:

Sec. 20-10. - Unlawful acts.

- (a) It shall be unlawful for any person in a massage establishment to place his or her hands upon, to touch with any part of his or her body, to fondle in any manner, and to massage the sexual or genital area of any other person;
- (b) It shall be unlawful for any person in a massage establishment to expose his or her sexual or genital area or any portion thereof to any other person. It shall also be unlawful for any person in a massage establishment to expose the sexual or genital area or any portions thereof of any other person;
- (c) It shall be unlawful for any person while in the presence of any other person in a massage establishment to fail to conceal with a fully opaque covering the sexual or genital area of his body;
- (d) It shall be unlawful for any person owning, operating or managing a massage establishment, ~~knowingly~~ establishment, knowingly, or if the person should have reasonably known, to ~~to~~ cause, allow or permit in or about such massage establishment any agent, employee, or any other person under his or her control or supervision to perform such acts prohibited in subsections (a), (b) or (c) of this section.
- (e) It shall be unlawful for any massage service to be carried on within any cubicle, room, booth, or any area within a massage establishment which is fitted with a door capable of being locked. Doors shall be provided with a sign, light or other

signaling device to indicate when the cubicle, room, booth or area is occupied and a massage is being provided.

- (f) It shall be unlawful for any individual to live, sleep, or stay overnight at a massage establishment. No customers shall be permitted to enter a massage establishment after or before the establishment's hours of operation. Employees, managers or owners of a massage establishment must leave the premises of the massage establishment no later than two (2) hours after the business's hours of operation, which shall be prominently posted on the premises and visible from outside the building(s) in which the massage activities occur.
- (g) It shall be unlawful for any massage establishment to operate under a name not specified in its license application, nor shall it conduct business under any designation or location not specified in its license.

Sec. 20-27. - Application.

- (a) *Filing, fee.* Every applicant for a license to maintain, operate, or conduct a massage establishment shall annually file an application under oath with the city upon a form provided by the city clerk and pay a nonrefundable annual license fee as set from time to time by resolution of the council, ~~which such fee shall also include a charge based on the number of individual massage therapists to be employed at the establishment, and as to each such massage therapist a permit under article III below shall also be applied for at the same time as the establishment license.~~
- (b) *Inspections of premises.* Copies of the application shall within five (5) days also be referred to the department of building and safety and the fire department. The departments shall within thirty (30) days inspect the premises proposed to be operated as a massage establishment and shall make written verification to the city clerk by the building official and fire chief or code official concerning compliance with the codes of the city that they administer. The inspections shall be conducted by personnel as determined to be appropriate by each department, and may include additional inspections or re-inspections by additional personnel to determine compliance If after an inspection either department determines that the premises is not suitable for a massage business or is not in compliance with the City's Code, the departments shall inform the City Clerk of this information.
- (c) *Investigation of applicants.* The application shall further be referred to the police department for investigation ~~of the applicant's character and qualifications.~~ The police department shall conduct an investigation into the applicant, the business, and any other owners, members, or partners in the business in accordance with the criteria set forth in Section 20-29 below. If after an inspection such investigation the police department determines that the applicant, the business, or any other owners, members, or partners in the business are not of suitable character to

conduct or maintain such a business in the City, the department shall inform the City Clerk of this information.

(d) *Contents.* Each application shall contain the following information:

- (1) A definition of service to be provided;
- (2) The location, mailing address and all telephone numbers where the business is to be conducted;
- (3) The name and residence address of the applicant:
 - a. If the applicant is a corporation, the names and residence addresses of each of the officers and directors of the corporation and of each stockholder owning more than ten (10) percent of the stock of the corporation, each of which shall be considered to be an applicant under this chapter, and the address of the corporation itself, if different from the address of the massage establishment;
 - b. If the applicant is a partnership, the names and residence addresses of each of the partners including limited partners, each of which shall be considered to be an applicant under this chapter, and the address of the partnership itself, if different from the address of the massage establishment;
 - c. If the applicant is a limited liability company, the names and addresses of each member, manager and assignee of membership interest, each of which shall be considered to be an applicant under this chapter, and the address of the limited liability company, if different from the address of the massage establishment.
- (4) The prior addresses of the applicant for preceding ten (10) years;
- (5) Proof that the applicant is at least eighteen (18) years of age;
- (6) Applicant's height, weight, color of eyes and hair, and sex;
- (7) Copy of identification such as driver's license; and social security card, if any;
- ~~(8) One (1) portrait photograph of the applicant at least two (2) inches by two (2) inches and a complete set of applicant's fingerprints which shall be taken by the police chief. If the applicant is a corporation, one (1) portrait photograph at least two (2) inches by two (2) inches of all officers and managing agents of the corporation and a complete set of the same officers' and agents' fingerprints which shall be taken by the police chief. If the applicant is a partnership, one (1) front face portrait photograph at least two (2) inches by two (2) inches in size of each partner, including a limited partner in the partnership, and a complete set of each partner or limited partner's fingerprints which shall be taken by the police chief. 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. If the applicant is a limited liability company, one (1) front face portrait photograph at least two (2) inches by two (2) inches in size of each member, manager and assignee of membership interest, and a complete set of each member's, manager's and assignee's of membership interest fingerprints which shall be taken by the police chief. If any of the applicants listed above are unable to make themselves available for fingerprinting by the police chief, then they may have their fingerprints taken by an outside law enforcement agency in another jurisdiction in the United States and submitted to the police chief;~~

- (9) Business, occupation, or employment of the applicant for three (3) years immediately preceding the date of application, identifying the time period, address and telephone number for each business, occupation or employment;
- (10) The massage or similar business license history of the applicant; including whether such person, in previously operating in this or another city or state has had a business license revoked or suspended, the reason therefore, and the business activity or occupation subsequent to such action of suspension or revocation;
- (11) All criminal convictions other than misdemeanor traffic violations, including the dates of convictions, nature of the crimes and place convicted;
- (12) A written statement and information as to the applicant's character, experience and financial ability to meet the obligations and business undertakings for which the license is to be issued. In those cases where the applicant is borrowing funds for such purpose, the identification of the person or entity providing the funds, and information as to the financial ability of such other entity or person to meet such obligations and undertakings;
- ~~(13) The names, current addresses and written statements of at least three (3) bona fide permanent residents 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. These references must be persons other than relatives and business associates; Not sure this is necessary as references are not contacted.~~
- (14) The name and address of each massage therapist who is or will be employed in the establishment;
- ~~(15) A diploma or certificate of graduation from a recognized school or other institution of learning wherein the method, profession and work of massage is taught, provided, however, that if the applicant will not himself engage in the practice of massage, he need not possess such diploma or certificate of graduation from a recognized school or other institution of learning wherein the method, profession and work of massage is taught;~~

- (16) The name and address of any massage business or other establishment owned or operated by any person whose name is required to be given in subsection (3) of this section wherein the business or profession of massage is carried on;
- ~~(17) A description of any other business to be operated on the same premises or on adjoining premises owned or controlled by the applicant;~~
- (18) If the facility is to be located in a proposed building for which site plan approval has not yet been obtained, or in an existing building that is to be remodeled, construction plans for the proposed building or remodeling, together with a conceptual plan showing the relationship of the building to the surrounding property and uses, and proposed building elevations;
- (19) 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 license;
- (20) Any other information pertinent to the application and operation of the proposed facility as may be required by this chapter;
- (21) Such other identification and information necessary to discover the truth of the matters specified in this section as required to be set forth in the application.

Upon completion of the above provided form and the furnishing of all information required by this section the city clerk shall accept the application for the necessary investigations. The holder of a massage establishment license shall notify the city clerk of each change in any of the data required by this section to be furnished within ten (10) days after such change occurs.

Sec. 20-29. - Grounds for grant or denial.

In determining whether to grant or deny a license for a massage establishment, the city clerk ~~shall~~ may consider any of the following:

- (1) Whether the correct license 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's experience in managing a massage establishment or in managing similar establishments, including applicant's failure to comply with, or to ensure compliance with by others, any and all rules and regulations governing the conduct of a massage establishment under this Chapter or otherwise;
- (3) The applicant's general business management experience, including the applicant's failure to comply with, or to ensure compliance with by others, any and all rules and regulations of the City of Novi Code or Ordinances;

- (4) The applicant's general business reputation, which may be established through investigation by the City or by law enforcement agencies; by reference to reports from other sources, such as newspapers, news agencies, other municipalities that have investigated or other individuals or entities engaged in the massage industry; or by any other appropriate and reliable means or methods; provided, however, that the basis for such determination shall be set forth in any findings hereunder;
- (5) ~~The applicant's moral character~~Whether the applicant has engaged in, or has allowed or permitted others to engage in, conduct (within the City or any other jurisdiction) that violates the City of Novi Code of Ordinances or the laws of the State of Michigan, including but not limited to this Chapter, where such conduct is found by the City Clerk to have been established by a preponderance of the evidence and the basis for such determination is set forth in any findings hereunder;
- (6) Whether the applicant if an individual, any of the stockholders holding more than ten (10) percent of the stock of the corporation or any of the officers and directors if the applicant is a corporation, any of the partners including limited partners if the applicant is a partnership, any of the members, managers or assignees of membership interest if the applicant is a limited liability company, or the holder of any lien of any nature upon the business and/or the equipment used therein, and the manager or other person principally in charge of the operation of the business, have 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, or fraudulent or misleading conduct;
 - c. An offense involving narcotics, dangerous drugs or dangerous weapons that amounts to a felony.
- (7) The applicant's financial status and ability to build and operate the proposed facility.
- (8) The effects, including those resulting from pedestrian and vehicular traffic, the reputation of the business, or its proximity, that the proposed facility would have upon the surrounding neighborhood and business establishments, including impacts upon residential areas, church and school districts;
- (9) Whether the operation, as proposed by the applicant, if licensed would comply with all applicable laws, including but not limited to the city's building, zoning and health regulations. If the facility is to be located in a proposed building for which site plan approval has not been obtained, or in an existing building that is to be remodeled, the city clerk may give conditional approval of

a license, contingent upon the granting of a final certificate of occupancy for the facility;

- (10) Whether 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;
- (11) Whether 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, or other municipality within five (5) years prior to the date of the application;
- (12) Whether the applicant if an individual, any of the officers or directors if the applicant is a corporation, any of the partners including limited partners if the applicant is a partnership, any of the members, managers or assignees of membership interest if the applicant is a limited liability company, and the manager or other person principally in charge of the operation of the business, is not over the age of eighteen (18) years.
- (13) The recommendations from the Police Department, Fire Department, or the Department of Building and Safety recommending for or against granting the license;
- (13) Such other considerations as the city clerk may deem proper, provided such considerations are reasonable under the circumstances.

Sec. 20-30. - Approval or denial of application.

~~The city shall act to approve or deny an application for a license under this article within a reasonable period of time and in no event shall the city act to approve or deny the license later than ninety (90) days from the date that the application was accepted by the city clerk. If a renewal application is denied, the establishment shall immediately cease operations. An appeal of the denial shall not stay the effect of this provision. No reapplications may be submitted by an establishment within a one (1) year period after an application is denied. will they be notified by certified mail and have to cease operations upon receipt of the letter? What happens if an initial application is denied, does the one year rule still apply? Does "establishment" still apply if they change their name, or have new ownership? Does this mean they can't operate while in the appeals process, if they choose to appeal?~~

Sec. 20-37. - Revocation, suspension.

~~Any license issued for a massage establishment may be revoked or suspended by the City Clerk for good cause, which may include any of the reasons set forth in Section 20-29 above. after notice and a hearing for good cause or in any case where any of the provisions of this chapter are violated or where any employee of the licensee, including~~

~~a massage therapist, is engaged in any conduct which violates any of the state or local laws or ordinances at the licensee's place of business and the licensee has actual or constructive knowledge by due diligence by. Such license may also be revoked or suspended after notice and hearing, upon the recommendations of the county health department that such business is being managed, conducted or maintained without regard to proper sanitation and hygiene. Revocation proceedings shall be conducted by an administrative hearing officer appointed by the council by resolution. Upon appointment, such individual shall serve as requested. The qualifications of the hearing officer shall include familiarity with building and health codes or other state or local laws or ordinances. The hearing officer shall provide notice of the hearing to the applicant, who shall be given opportunity to be heard and to present evidence on his behalf directly or by authorized representative(s). The notice and hearing shall occur within a reasonable time. Consistent with the provisions of section 1-12 of this Code, the decision of the hearing officer may be appealed to the city council.~~

Sec. 20-38. – Appeal of a denial, revocation, or suspension of a license.

Any person whose license is denied, revoked or suspended by the City Clerk may appeal to City Council in writing, stating reasons why the City Clerk's decision should be overturned. The City Council may grant or deny the appeal after reviewing this material and allowing the applicant a reasonable opportunity to be heard at a public meeting. City council shall have the power to reverse, affirm or modify the decision. The City Council may in its discretion appoint an independent Hearing Officer to conduct a hearing and make a recommendation to the Council. The decision made by City Council shall be final.

PART II.

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 III.

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 IV.

Repealer. All other Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

PART V.

Effective Date: Publication. The provisions of this Ordinance shall become effective fifteen (15) days after its adoption and shall be published within 15 days of its adoption by publication of a brief notice in a newspaper circulated in the City, stating the date of enactment and the effective date of the ordinance, a brief statement as to the subject matter of this Ordinance and such other facts as the Clerk shall deem pertinent, and that a copy of the Ordinance is available for public use and inspection at the office of the City Clerk.

Robert J. Gatt, Mayor

Cortney Hanson, 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 _____, 2019.

Cortney Hanson, City Clerk